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International Court of Justice

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Official Transcript of the International Military Tribunal in the matter of The United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of Soviet Socialist Republics against Hermann Wilhelm Goering, et al, Defendants, sitting at Nurnberg, Germany on 22 August 1946, 1000-1700, Lord Justice Lawrence presiding.

DR. BOEHM: Mr. President, may it please the Tribunal yesterday I submitted some of my documents which prove that many people were members of the SA through legal compulsion. In that connection I should like to contine my presentation of evidence.

Documents 200, 201, 203, 208, and 213 of the SA demand service for replacement in the Finance Offices.

It is regrettable that, on the basis of the actions of the occupying power, one witness, Dr. Meder, could not appear. We could not correspond with him, for it had been learned that he had been earmarked to be a witness in this proceeding. All of the attempts made by the Secretary of this High Tribunal have been in vain, and it has been impossible for us to bring this witness from the Russian Zone to Nurnberg.

This witness had been called to testify to the effect that from the years 1936 through 1944, fourteen ---

THE PRESIDENT: (Interposing): Dr. Boehm, we are hearing you now upon your documents; we are not hearing you upon the question of any difficulties there may have been in getting witnesses.

Kindly go on.

DR. BOEHM: The following are the schools as they existed in the Reich: Herrsching, Ilmenau, Moersburg, Koellerhof, Berlin, Moelln, Feldkirch, Leipa, Leitmeritz, Bodenbach, Thorn, Siegmaringen, and Boppard.

Even private enterprises, to a large extent, required membership in the HJ and the SA. This is proven by documents 215 and 216, that membership in these organizations was required.

SA document 218 says that the directive of the 3rd of October, 1933 ---

THE PRESIDENT (Interposing(: You are going a little bit too fast; your light is flickering.

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DR. BOEHM: Yes, Mr. President, I shall try to speak more slowly.

SA Document 218 tells us that because of the directive of the 3rd of October, 1933, it was set forth that the Health Pioneer Service, Hilfspionier Dienst, was to be taken over into the technical service of the SA.

SA Document 220 deals with the question of whether expulsion from the SA would be a reason for the termination of a labor contract, and under certain circumstances the answer was "yes".

A commentary is furnished by document 221, and I quote:

"The legal obligation under oath given out by the Fuehrer makes any leaving of the SA or any other association absolutely impossible. Only physical unfitness or other cogent reasons will permit your leaving the SA."

This is an excerpt from the Handbook of the SA, published with the permission of the highest SA leadership.

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Document 222 also shows that any explusion from the Party or from its formations might have, as a result, the lack of employment, and this was set down in an official directive of the Justice Ministry. How cases did take place may be seen therefrom. Therefore, it is not strange that German citizens were appointed to agencies under compulsion. It existed, as may be shown from document SA 243, which is a note of the Holy See in Rome. It says, "The Holy See knows to what extent the freedom of taking decisions is limited in Germany today by the pressure forced upon nearly all the citizens; upon civil servants, employees, workmen, scholars, and even upon persons with the formerly free professions, through the economic conditions and enxiety for their mere existence."

THE PRESIDENT: Did you say 243 in your document book?

DR. BOEHM: 143, Mr. President.

THE PRESIDENT: Oh, 143. Go on.

DR. BOEHM: And in the third part of my presentation of evidence, I should like to refer to the evidence of a witness who does not have an especially leading poisition, and I shall turn to the subjective matter at hand. Under the date of 13 March 1946, paragraph 6, figure 3, applies here.

In document SA 224, an excerpt of a magazine by an SA leader, the concept "Wehrtuechtigkeit" is explained as "fitness for military service, and then it says, "The fitness for military service and being familiar with records of war and their use will teach the German man how to act in service. From SA document 224 we can see that the SA did not have anything to do with the Waffenschule (Military Training School), therefore, no military training was given. This may be proven by SA document 225 and 226. Excerpts from the magazine, "Der SA Fuehrer" says, "You can always further the ever present designation of the sphere of the tasks of the SA and of the Wehrmacht. The SA, in connection with the HJ, looks to the spiritual and physical conditions."

From document 226 we can see that Hitler forbade any military connection in an organization of a Wehr or of a Free Corps. It was denounced by Hitler. Document 229 shows that the members of the SA did not know and could not know about the so-called criminality as the Prosecution claims, for on May 25, the

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Rhine Commission lifted the ban on the "German Freedom Party". As Hitler well knew, to lull the population, the order which he gave on 1 July 1934 in which he gave an entirely different background to the Roehm Putsch than the conditions which actually existed.

Mr. Jackson has accused the members of the various formations of the fact that they were not being accused of their entering into the organization, but rather, their remaining in the organization, for, after all, they know the conditions of the concentration camps. In this connection I quote document 250 and I should like to submit it. It is a document from which we can see that one of the most prominent members of the Catholic Church in Munich, who had spent years in a concentration camps, deals with this question. From this we can see just exactly what injustices were taking place in the Third Reich.

"For eight years I collected everything that could be learned of National-Socialist laws, decrees, police measures, information about injustices, about acts of violence, infamy, crimes, blasphemies, persecution of the church, murder, etc. Hundreds of pages of the book "The Persecution of the Catholic Church" which was mentioned in the beginning and which was published in 1940 were taken from my collection. It will carry more weight if I give the assurance that, 'As far as atrocities in concentration camps and crimes in the occupied territories are concerned, I could practically learn and pass on nothing'."

How could an individual know of the things which we have learned of today? For one thing, he would not have had the sources of information that Newhauesler had. Now, I shall turn to my third part of the presentation in which the Prosecution asserts that the SA had been a terror organization. Just what the matter was in this connection may be seen from documents 285, 286 and 287. It may be clearly seen that the circular, quoted given out by the legal society, says that it was the KPD which incited the people against democracy; that it was the KPD which incited the people against the class struggle. As document 286 shows, this demand for the class struggle took place with the so-called idea of world revelation. In connection with this I should like to quote from document 132, that "the civil war was sponsored by the KPD",

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and it also refers to this matter of the civil war and the line of a terroristic conflict with the Leftist party.

From SA document 286, a verdict given by a State Court after the year 1925 issued against Link and colleagues, we see that in this latent civil war the battle against the circles of the NSDAP and the Reichswehr was raised again and again. In this connection the establishment of the SA as a protection against the Leftists is shown in documents 311 and 314. These are excerpts from the book "Mein Kampf" written by Hitler.

From SA document 300, an excerpt from Gisegius's book, "Until the Bitter End", we can see an explanation to the effect that pressure, even though there were demands for civil war, existed. We see an opinion of Hitler which Mr. Gisevius must admit, and this may be seen from document SA-301, that the National Socialist revolutionary demands found victims. In SA document 302, Mr. Gisevius admits that so far as the excesses took place, on the whole it was just a small clique that participated. I shall quote:

"They are the group staffs, their hired staff guard as well as that gang of roughnecks who are to be found in any place where mischief is in the wind."

In documents 304, 305, 306, it is shown what a serious matter this was with Hitler and how he, as higher SA leader, tried to prevent a civil war. Therefore, again and again he demanded discipline. In this connection I would like to quote the directive of 30 March 1941, SA document 306. It says, verbatim, in figure 2,

"Every party member, regardless of his position in the party, will be immediately excluded from the party if he takes it into his head to violate consciously the regulations of the emergency decree or to tolerate or to approve of such offenses."

Document SA 312 deals with the prohibition of terrorizing Jewish citizens.

In the fifth part of my document book I should like to bring to light the position which document 316 shows was taken by the Party in the year 1933 in regard to the church. The Party and the church had reached a common ground of understanding, and we can see that the churches believed they could have confidence, and that the prohibitions and warnings were not necessary any longer.

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Therefore, attending services was permitted also.

From SA document 317 we can see that others were asked to join the formations of the Party and to work in all confidence. I shall quote:

"Consequently, we mean to devote our entire Catholic assets, Christian Conservative ideas and Christian progressive forces to the New Germany; build and enhance her spirit with our own, and not let ourselves be pushed aside or keep aside, but serve Germany with all our best resources wherever she needs us for her remaking. We are therefore determined to work actively, with every possible means and relations at our disposal, for the union of all Germans.

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And for the same reason, we shall make it obligatory for all members to join the Wehrausbildung. We naturally also welcome the adhesion of a many Catholic students as possible to the paramilitary societies acknowledged by the State. We must consequently, with a spirit of self-sacrifice, in true Christian and German sentiment joyfully participate in the process of construction of the Reich."

From SA Document 320, we can see that assurance given in the Session, which was Session 115 of the Bavarian Diet of the 29th of April, 1931. This assurance reads:

"On the contrary, our Fuehrer Adolf Hitler repeatedly stated that the Party is to be led in such a manner that no Roman Catholic as a faithful member of the National Socialist German Labor Party can come into conflict with his conscience."

In SA Document 327, in the Hitler speech of the 23rd of March, 1933, we can see that same assurance when re read:

"The National Government sees in both of the Christian denominations high important factors for the preservation of our national characteristics (Volkstums). It will respect the agreements concluded between them and the provinces (Laender): their right shall not be infringed.....

The National Government will permit and safeguard the influence of the Christian denominations in school and education to which they are entitled. It is its concern to insure a sincere cooperation between Church and State." We may see therefore that we are not to figure on the fact that a school wothout church would ensue.

SA Document 321 shows in a directive issued by the Fuehrer's Deputy on the 23rd of January 1939: "In my directives of 11 November 1937 and 1 June 1938 I decided that the Party, its branches and associated organizations were to abstain from exerting any influence in internal Church matters.

I am again compelled to remind of the unaltered position of the Party in regard to these Church and confessional discussions and I make again known the directives for all branches and associated organizations of the Party as follows."

From SA Document 326, we can see that in the year 1931 it wasn't thought of to exterminate Jews, as it unfortunately happened later on.

Now I shall deal with the members of the Steel Helmet Organization who were taken from the SA into the Steel Helmet Organization. Will it please the Tribunal to turn to my Document Book which concerns itself with the organization Steel Helmet, Document No. 1. It is a regular address given by the first leader of the "Stahlhelm".

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THE PRESIDENT: Which book is it?

DR. BOEHM: Book Four, Mr. President . The first document is a regular addre made by the first leader of the Stahlhelm Organization, Franz Seldte, given on th 27th of November, 1933, and contains: "I, who am a member of no party, hereby de my entry into the National Socialist German Workers' Party, because it is the mov ment that is to confine the whole German people into a single unit.

I therefore place myself, together with the Stahlhelm Association of Front li Soldiers which I founded, as a military unit complete in itself under the command of the Fuehrer Adolf Hitler. . . .

Document Two contains an explanation given by the Reichs leadership NSDAP, si ed by Hess, dated the first of May, 1933, from the German newspaper "Fraenkischer Kurier". From this document, we can see that the Steel Helmet Organization, despi its subordination to Hitler, was to remain a body quite independant within itself.

Document Three is an excerpt from a situation report given by the Federal Lea of the Stahlhelm Organization, the 28th of April, 1933. From the first few paragr we can see that the second unit of Duesterberg was not agreeable to keeping up th contact with the first leader Seldte. The second paragraph shows a direct dismiss of the second leader Duesterberg, given by way of telegram signed by Seldte. Fro the last paragraph of this document, I should like to quote the last sentence--i the telgram sent on the same day: "I therewith take over the sole dictatorial lea ship of the Association."

Document five contains the open letter of the leader of the Steel Helmet Orga zation, of the third of May, 1933. The man is defining his attitude here, and it s that Seldte, because of the measures which were contrary to the regulations, was any longer considered the regular leader of the organization, but not considered Duesterberg.

Document Six contains an agreement between Duesterberg and Hitler.

THE PRESIDENT: Dr. Boehm, if I remember right, one of the witnesses who was heard here before the Tribunal, dealt with the entry of the Stahlhelm into the SA did he not?

DR. BOEHM: Yes.

THE PRESIDENT: Do you contradict him?

DR. BOEHM: No, Mr. President.

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THE PRESIDENT: Surely these documents which relate to the introduction of th Stahlhelm into the SA can be dealt with quickly as a group. You can give us the numbers of the documents. The witness has given evidence that has not been cros exmained, and it isn't necessary to refer in detail to these documents which mere ly support the evidence of the witness.

DR. BOEHM: Yes, Mr. President. Now, I shall turn to Document No. 6, from wh we can see that the Steel Helmet Association was to be put under the leadership of the SA. Then I shall turn to document No. 7. which is a decisive order given by Hitler, from which I should like to quote part of the end. Page one, paragraph six. "The entire Stahlhelm will be placed under the command of the Supreme SA Leadership and will be organized according to their directives."

Then I should like to refer to Document No. 8. from which we can see that the Wehrstahlhelm was to be taken over by the SA as well--the military Stahlhelm-- and especially that the members of the Wehrstahlhelm can in the future remain as members of the Stahlhelm.

Now I shall turn to Document No. 9: So that these expeditious incorporations of the Steel Helmet shall be carried through.

Documents 10 and 12 concern themselves with the members of the Wehrstahlhelm; that they are to have equal rights, and that they are to have a certain unity.

Documents 13,14,15 and 17, the Decree of Hitler of January, 1934, should be emphasized here. Document 17 and Document 18 bring about the complete amalgamatio of the Steel Helmet Reserve.

Document 18-A: According to which all members who are over 45 years are incor porated into the SA Reserve.

Document 19,21, from which I should like to quote briefly-- I should like to quote Paragraph two: "Members of the former Stalhelmbund (Members of the Steel- helmet Union) who were already transferred into SA-Reserve 1. cannot of their own volition sever their connection with SA-Reserve 1 for the sole purpose of joining other associations. One who, becauses of a physical defect, cannot discharge his duties or who for other reasons wishes to leave SA-Reserve 1.just make an applic tion for his withdrawal, stating the reasons for his request. Dual membership in the SA-Reserve 1. and in the NS Veterans' Association is permitted provided the individual joined the former Stahlhelm before 30 January 1933."

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Now, I should like to refer to Document 22, which shows the practical realization of an incorporation of a Rheinish Steel Helmet Unit into an SA Reserve 1.

Document 23 deals with the dissolution of the National Socialist German Veterans Association in 1935.

Document 26 gives quotations from the Steel Helmet Hand book published by Heinrich Hildebrandt and Walter Kettner. I should like to quote one sentence on page 17: "The Stahlhelm knows war and therefore desires peace."

Then I should like to refer to Documents 29 and 30, which are meant to prove that members of the Steel Helmet made the effort to leave the SA-Reserve 1. The documents which follow deal with those members of the Steel Helmet who did not agr with their introduction into the SA.

THE PRESIDENT: Couldn't you tell us what the effect of all these documents is rather than reading us all through 30 documents? You have given us now about the Stahlhelm. Haven't you got any idea what they come to?

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DR. BOEHM: With the submission of these documents I mean to show to the High Tribunal that the Steel Helmet Organization in no way was in agreement with the measures which were taken in the period of time in which it was introduced and taken over by the SA, that members of the Steel Helmet Organization tried to leave the SA, that they met with difficulties, and that the ideal attitude held by the Steel Helmet was, in a large measure, quite different from that held by the SA.

THE PRESIDENT: Yes, go on.

DR. BOEHM: Then I should like to refer to a series of newspaper articles which are contained in Documents 32, 33, 35, 37, 39, 40, 41, 42, 44, 45, 46, 47, 48 and 49.

Document 34 is a report given by Sturmbannfuehrer of the SA dealing with the conspiracy by the Steel Helmet against the SA in 1933 in Pommerania. Document 36 deals with the poster giving a threatening message against the National Socialist Veterans Associations.

Document 33, and I quote but briefly "The Steel Helmet Organization in Brunswick dissolved. 1350 men were arrested and interned." From the second paragraph in the center --

THE PRESIDENT: You have given us a long list of newspapers. What is the object of them? Is there anything which connects these together, makes them into a group?

DR. BOEHM: They all have a certain cohesion, a certain sense of this respect, Mr. President, for in this way I hope to prove that in various spots the Steel Helmets were dissolved, that members of the Steel Helmets were arrested and that they had difficulties for in the large part they disagreed with being taken into the SA and disagreed with the attitude held by the SA on political and spiritual matters.

THE PRESIDENT: I understand then that they are illustrations of the difficulties which the Steel Helmet Organization had with the SA; incidents.

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DR. BOEHM: Yes. Now briefly --

THE PRESIDENT: The contention is that the Steel Helmet weren't really volunteers, into the SA; is that it?

DR. BOEHM: Yes, Mr. President. They entered the SA on the strength of orders.

THEPRESIDENT: Very well. You can pass from that group, I think.

DR. BOEHM: Very well. Now I shall turn to Document Book No. 5, in which I dealt with those documents relating to the mounted units. Documents 56 and 57 deal with the origin, the development, and the organization of the NS Mounted Corps. Document 56 is an excerpt from an official organ of the Reiter Corps, German utility horses, in the year 1933. Perhaps it is important that the president of the riding societies said that the associations were to be changed into a National Socialist Reiter Corps so that all riding in the country would become a certain organization with its own formation, without being incorporated into the SS.

Document 57 shows the diagram or the scheme according to which the Reiter Corps only at the top was connected with the General SA.

The next few documents deal with the tasks, aims, and activity of the NS Reiter Corps. Documents 59, 60, and 61 are extracts from the rules of riding villages whose members were not permitted to carry out political activity. This attitude was maintained and retained after 1933.

Documents 62, 63, 65, 66 and 67 are official orders from which we can see the activity of the NS Reiter Corps.

Document 69 is an official brochure dealing with the bases for the receiving of the Reiter certificate. This document has no political character at all. Document 70 gives the prerequisites for the granting of the Reiter emblem. Military and political views played no role in this connection. The emblem was an honorary sport emblem and it was the highest hope of all members of the NS Reiter Corps to have this. I shall have this submitted to the High Tribunal as document 71, dealing with the emblem, and perhaps I might refer to the

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fact that it was the only emblem which bears no National Socialist insigria.

The last four documents 101, 102, 193 and 124, have been gleaned from a tremendous number of photos and photostats, which give us a typical picture of the activities of theReiter Corps.

Now I shall turn to my discussion of the affidavits, Mr. President, and I shall deal with the first group of affidavits which I have submitted. I should like to refer to theGeneral SA 17, 74, and 81. These affidavits deal with the topic of coercion, legal coercion to force entry into the formations. Affidavit 1, deposed by Dr. Menge, deals with the problem of the forceful incorporation into the SA, dealing with the Water Sports Association into the Naval SA.

Affidavit General SA number 60 deals with the forced entry of sport associations as closed sturm units of the SA.

Affidavit No. 61 deals with the responsibility of leaving the SA.

The topic that the SA did not prepare for war as an auxiliary of the state government is dealt with in the affidavits General SA 38, 39, and 40. From these we see that the preaching of a war of revenge against France would result in an expulsion from the SA, for the SA leadership forbade all discussion regarding the South Tyrolean and Alsation question.

Affidavit SA 38, deposed by Dr. Busse, deals with Staff Chief Lutze, and it characterizes him as an opponent of any and all warmongering. We can see unequivocally from Affidavit SA 1, deposed by Dr. Menge, which deals with the agreement concluded between the Wehrmacht and the SA, the contents of which it gives, if there were to be any conflict between the SA and the Wehrmacht, the SA would take the side of the Wehrmacht. From the same affidavit we can see thatStaff Chief Lutze, in the autumn of 1939 at a conference with Hitler and Goebbels, energetically condemned a war against Poland.

Affidavits General SA No. 5 and 6 deal with the preparation of the SA for the Party Rally in 1939.

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Affidavit No. 76 deposed by General von Hoerauf, deals with the negotiation carried on by Roehm in 1931 and 1932 and the agreements he reached with English-French political circles, the contents of which were: 1, within a brief period of time Roehm reached the top of the NSDAP; 2, the press of the NSDAP has come under British influence; 3, the establishment of an extra polit cal and military political bureau. In connection with these negotiations --

THE PRESIDENT: The Tribunal is finding this very difficult tofollow. You have here, I suppose, about 200 affidavits, something like that. Now, wouldn't it be the best way to put them into groups, and tell us the numbers of those which relate to some subject? Don't they relate to any particular subject, or are there 200 subjects that they relate to? Have they no possibility of being grouped together?

DR. BOEHM: Mr. President, that will be hard to do, for this reason: as far as the individual affidavits are concerned, special points are found which have to be emphasized and which are not commonly found in all of the affidavits.

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I should like to be brief and I have tried to be brief already when I grouped my collective affidavits together but as far as these individual affidavits are concerned, it is almost impossible for me to do that and to apply a common denominator.

THE PRESIDENT: It is a great deal more difficult for the Tribunal to follow.

DR. BOEHM: Of course, but in one affidavit No. 76, deposed by General Hoerauf, we hear about what aims were pursued by Roehm.

THE PRESIDENT: Surely, Dr. Boehm, if you are going to inflict upon us the whole of these two hundred affidavits, you might at least do it in order.

DR. BOEHM: Then I shall turn to No. 83, deposed by Adolf Freund.

THE PRESIDENT: I would think that if it is up to 83, we are not going to hear any more about it or are we going to jump back to 1, 2, 3, and 4?

DR. BOEHM: Mr. President, these affidavits have been grouped according to certain points of view and therefore I cannot present them in consecutive order.

THE PRESIDENT: I am afrain I must not be speaking clearly or else the translation is not coming through to you clearly. What I asked you to do was to give us the topics with which these affidavits deal and then give us the numbers of the affidavits which deal with each topic. Now you are telling me that there are groups and that the affidavits are grouped with reference to topics. Will you kindly give us the topics and the number.

DR. BOEHM: Certainly, Mr. President. I have told you, Mr. President, th I have been able to adhere to this grouping in my collective affidavits; howeve it was very difficult to follow the same procedure with individual affidavits. Of course, that was the idea I intended to convey.

THE PRESIDENT: Go on.

DR. BOEHM: But I shall try to take into account what you have said in so far as possible. Now, I shall turn to the group of those affidavits which deal with the fact that the SA was not a military formation. This topic is dealt with in affidavits 25, 27, 28 and 30, that the schools of the chiefs of the training system did not have any military character. That is, to be proved by

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affidavits 32, 33 and 37, that the sport emblem and its character is to be explained and clarified in the affidavit No. 8, dealing with the question whether the Feldherrnhalle was subordinate to the Wehrmacht and the SA and the question is to be clarified by affidavit No.18 and how far it was subordinate to the Wehrmacht and this is an affidavit deposed by the General Guenther, the commander of the 1st Panzer Division, who was with the Feldherrnhalle.

The next group of affidavits deal with the fact against the statement advanced by the prosecution that the SA was a terrorist organization. From affidavit No. 15, deposed by General Hoerauf, we can see that the Reich Minister Severing was the one who issued the SA service regulation -- Affidavi No. 19, 20, 21 and 22.

THE PRESIDENT: Dr. Boehm, I don't know whether you were in Court yesterday but I pointed out to the counsel who was dealing with the matter then, tha it is utterly useless to simply read over to us the summary which we have before us. Now, you have just referred us to affidavit No. 15 and the summary before us is this: "Franz von Hoerauf. 24.6.46. Former Reichsminister Severing's lack of objection to SA Service regulations." Those are practically the identical words which you have just repeated to us. Now, what is the good of that.

DR. BOEHM: Mr. President, I do not know the compilation you have before you and I haven't read it. I do not have any translation of this compilation either; therefore, I do not know what is contained in your compilation and wha is not contained there.

THE PRESIDENT: You mean you haven't got this summary?

DR. BOEHM: I received the book and I repeatedly asked that a translatio be given me, because of the fact of my colleagues ---

THE PRESIDENT: If you were here yesterday, you must have heard me say over and over again to counsel who was presenting the documents, that we had before us a summary and that it was useless for him to repeat the summary to u Now, what would be useful would be, as I have already pointed out, if you woul group these affidavits and tell us what topics they relate to and also tell us

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which of them have been translated and if there are any to which you particularly desire to draw our attention, which have been translated, then draw our attention to the passages in those to which you wish to draw our attention.

DR. BOEHM: My last group which I set up is to prove that the SA was a protective organization against terror and in this connection, I mention affidavits No. 19, 20, 21, 22, 23, and 24, and that the excesses in Berlin extended only to a restricted circle of persons. That fact is to be proved by affidavit No. 84.

THE PRESIDENT: Have any one which you have just given us, which show that the SA was not a terrorist organization, been translated?

DR. BOEHM: I have not received the translation of my affidavit, Mr. President, therefore I do not have any possibility to check which have been translated and which have not been translated so far.

THE PRESIDENT: Surely, you must know which you have asked to be translated. Somebody must have asked it.

DR. BOEHM: Yes, Mr. President -- that, I don't know, whether the translation actually has been done?

THE PRESIDENT: No.

DR. BOEHM: For I did not receive any books which ---

THE PRESIDENT: You can tell us which ones you wanted to have translated couldn't you, which were being translated.

DR. BOEHM: I applied to have 21 affidavits translated, which are 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 76, 79, 82 and 89.

THE PRESIDENT: Very well. Now go on with your grouping, if you will. The last one you gave us was 84 which you said showed that the excesses were only very exceptionally.

DR. BOEHM: On the same topic, I should like to submit affidavit No. 87, in which we see what steps were undertaken against excesses in the West and that the SA did not have any attitude inimical toward the Jews, as asserted by the prosecution, and which may be shown by affidavit 54 and 57. The same may be seen from affidavit No. 54 and 53 -- To the topic which was the object of the presentation of evidence, Document 1721, the following deal with affi-

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davit 85 and 86; affidavits which are to prove this is a specific case, that the Gruppenfuehrer of the Brigade Kurpfalz-Mannheim did not give any order to destroy synagogues and in the same connection, I should like to quote affidavi No 89 and have it taken into account, and in conclusion, affidavit No. 70, from which we can see that Lutze, after the 9th of November 1938, did not any more permit the use of the SA for police use by the political leadership unles the leadership gave its permission for the use of the SA.

As far as the attitude of the Staff Chief Lutze himself is concerned, affidavits 71 and 72 deal with this matter; and affidavit No. 70 shows how those people were punished who participated in the enterprise from the 9th to the 10th of November 1938; how the SA took measures of its own accord against those who have participated on the 9th to 10th of November 1938, which may be seen from affidavit No. 4, and the basic attitude by the SA towards the church was, may be seen from affidavits 43, 44, and 45. The activity of the physicians in the SA can be seen from the affidavits No. 62 and 65 -- in so far as the SA was connected with concentration camps, this matter should be gathered from the general affidavit No. 16, deposed by Leonhard Gontermann. Finally, in order to conclude this topic and to conclude this group of affidavits, I should like to submit affidavit No. 62, deposed by Dr. Friese who, as a member of the KTD (?), was an expert in the Bavarian Ministry for the Plenipotentiary for Political Liberation, in which affidavit he states and he is speaking as one who was able to gather an overall picture as a political opponent that the SA was not a criminal organization in the sense of the charter and that it cannot be called such.

THE PRESIDENT: Which number was that?

DR. BOEHM: That was No. 62. I beg your pardon, there seems to be a typographical error -- 82. Mr. President, now, I should like to turn to the collective affidavits. This is grouped and compiled in perhaps 21 pages and I can save time myself on this report, if it is permitted me, to submit this document and have it translated. This compilation is of importance, for it is the result of more than 17,000 attitudes and in my opinion this would ---

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THE PRESIDENT: 17,000 what?

DR. BOEHM: 17,000 affidavits.

THE PRESIDENT: Yes.

DR. BOEHM: The complete contents of these affidavits have been summarized by me and compressed into 21 pages and I believe that it would have importance if it would be translated and I can save time by reporting on it now.

THE PRESIDENT: Yes, Dr. Boehm, it may be translated but it should not be translated until after your speech has been translated.

DR. BOEHM: Very well. Then I should like to submit this document which is a compilation and I should like to submit it to the Tribunal under the general No. SA-90.

Now, I should like to deal with these affidavits which are being used in the interests of the Steel Helmets and the members of the riding organizations. The Junior Steel Helmets being taken over into the SA on the strength of orders, that is a matter which is dealt with by affidavits 1, 2, 3, 5, 9, 10, 15, 18, 37 and 42; of all of these affidavits, Mr. President of the ones which have been submitted in this connection, the following were translated, Nos. 1. 2. 3. 4. and 9.

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The introduction of the nucleus of the Steel Helmet into the Reserve may be seen in affidavits number 1, 2, 5, 19, 20, 30, 33, 38, 7, 9, 10, 12, 16, 19, 40, 41, 42 and 43. The assimilation of the SA Reserve with the SA on the strength of orders is seen from affidavits number 1, 2, 5, 7, 12, 41, 41 and 42. And the fact of the resistance by the Steel Helmet members was prevented to the Session may be seen through affidavits number 1, 2, 4, 15, 17, 18, 9, 10, 11, 12, 34, 40, 41 and 42.

The following is to be proved, that the Steel Helmet members were taken over by the SA and that these people formed an independent unit within the SA according to the assurances given them, and it is to be proved by the following affidavits: 1, 5, 6, 7, 9, 14, 16, 17, 37, 38, 41 and 42. It is to be proved further that after the assurance of the corporative independents had been broken, the members of the Steel Helmet formed a closed circle or block within the SA, and that is to be proved by affidavits 1, 2, 4, 5, 7, 10, 11, 12, 13, 15, 18, 37, 39, 40, 41 and 44; and that the members of the Steel Helmet who had been taken over and who had been rejected for war may be seen from affidavits number 1, 2, 5, 9 and 40.

Political tolerance and the democratic attitude by the Steel Helmet men is shown by affidavits 4, 5, 9, 13, 16, 37, 39 and 44. The fact that the Steel Helmet men condemned religious persecution is shown by affidavits 1, 2, 9 and 18; and that the Steel Helmet members taken over condemned persecution for racial reasons may be seen from affidavits 1, 2, 4 and 38.

To the Russian Prosecution, those who were not taken over or Steel Helmet members who had left the ranks, the members of the Steel Helmet who had been taken over, felt themselves compelled to remain within the SA, and that is to be proved through affidavits number 1, 2, 3, 4, 37 and 39. The fact that the Steel Helmet members taken over had reason to believe that upon leaving the SA they would have trouble in making a living can be seen from affidavits 1, 2, 3, 5, 6, 7, 16, 18, 34, 37, 38, 39 and 40. That the Steel Helmet members taken over because of orders or through laws were kept within the SA may be seen from affidavits 1 and 41. The fact that those members of the Steel Helmet nucleus taken over into the SA Reserve, even if later on they were assigned to active SA formations, in practice they were reservists, may

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be seen from affidavits 1, 7, 12, 19, 33, 40, 41, 42, 6, 12 and 30.

And that the various grades and ranks within the SA were given out automatically and were in many cases only titles can be seen from affidavits 5 and 42.

I believe Mr. President, that it is possible for me to be equally brief in grouping the affidavits as they have been submitted for the Riding Associations, for my data in this connection hardly permits that but I should -- Mr. President --

THE PRESIDENT: Haven't you already given us in your documents adequate evidence about the Riders' Corps. Surely, you have given us four documents generally which allege that the Riders' Corps was --

DR. BOEHM: Yes.

THE PRESIDENT: -- purely a sporting organization, and that being, I suppose, the topic of the affidavits, why not give us the numbers of the affidavits.

DR. BOEHM: Yes, Mr. President, certainly.

THE PRESIDENT: I am going to adjourn now. I am only indicating to you what you might do. We will adjourn.

DR. BOEHM: Yes, sir.

(A recess was taken.)

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DR. BOEHM: Mr. President, with reference to the Cavalry Corps, I should like to refer to affidavits numbered 1 to 5, which deal with the construction, organization and creation of the Cavalry Corps.

Nos. 6 and 7 confirm the fact that its activity was horse breeding, care of horses and training in riding, and that the Cavalry Corps had in no way acted criminally and had no criminal character is to be established by affidavits Nos. 9, 11, 12, 13, 86, 71, 72, 73, 74, Nos. 19 up to and including 24, 87 and 88.

That the Cavalry Corps was in no way connected with the armed forces and was not furnishing cavalry replacements for the armed forces is to be established by affidavits Nos. 11, 13, 86; and the fact that the Cavalry Corps did not participate in the seizure of power is to be established by affidavits numbered 71 up to and including 74, and that no crimes against humanity have been committed by it is to be established by affidavits Nos. 19 to 24, inclusive, 87 and 88.

The attitude of the members of the Cavalry Corps regarding the Jewish problem is to be proved by the submission of affidavits 19, 20, 21 and 88.

With reference to the question of churches, I am submitting affidavits 22, 23, and with reference to the fact that there were differences of opinion regarding politics between the Cavalry Corps and the NSDAP, I am submitting as evidence affidavits 25 and 29, and that even the Party leaders distrusted the Cavalry Corps is to be proved by affidavits 31, 85, and that members of the Cavalry Corps could hardly have hit upon the thought that by belonging to the Cavalry Corps they were belonging to a criminal organization is to be proved by means of affidavits 76, 34, 77, 33 and 35.

Finally, I should like to give you a brief summary which deals with individual zones and individual sectors of the Reich. That is to say, conditions in the British Zone with reference to the Cavalry Corps and in the Rhineland will be proved by NSRK 37, 38, 39, 40, 78; with reference to Westphalia by 41, 42, 79; in Hannover, 43, 44, 45; in Oldenburg, 46; Eastphalia 47; in Bremen, Hamburg and Holstein, 48.

With reference to the American Zone of Occupation, and particularly Bavaria, I submit affidavits 49, 50, 51; Wuertemburg, 52, 53, 54; Hessen 55, 56, 57, 80; with reference to Baden, 58, 59, 60; Upper Swabia 61, 62; Pfalz 63.

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With reference to the French Zone, 81, and with reference to the Russian Zone, Saxony, 64; Thuringia, 65; East Prussia, 66 and 67; Berlin Brandenburg 82; Pommerania, Mecklenburg, 83; Silesia 84.

Mr. President, I should now like to make two applications. The first application is that the affidavit submitted by the Prosecution from Dr. Kurt Schuhmacher and from the Judge Advocate General of the General Staff, Dr. Stapf of Brunswick, may be introduced in evidence by me, and I should then like to ask you that the affidavit of Dr. Kurt Schuhmacher be given SA Number 91, and that the affidavit from Judge Advocate General Dr. Stapf be given SA Number 92.

THE PRESIDENT: Have they not already been offered in evidence by the Prosecution?

DR. BOEHM: They have not yet been submitted in evidence, but I should like to introduce them into the proceedings. I do not know whether they are to be submitted by the Prosecution. At any rate, I believe that considerable material on behalf of my organization is contained in these affidavits which has not been introduced by the Prosecution.

THE PRESIDENT: Why do you refer to the Prosecution then?

DR. BOEHM: The Prosecution have those affidavits in their original form. I merely received copies of these affidavits which were placed in my pigeonhole in the Counsel Room. That is how I learned of them, and I must emphasize that because I must ask the Prosecution to give me originals.

THE PRESIDENT: Is there any objection, Sir David?

SIR DAVID MAXWELL-FYFE: My Lord, these were the affidavits to which we referred at the close of the evidence of the witness Juettner. My Lord, we proposed, as I told the Tribunal, to put in certain affidavits in rebuttal. These two were affidavits which we did not propose to use, but we gave copies to the Defense, and I said that I had no objection to the Defense using them if they so desired. If they thinkthey can get any benefit from them, they can use them as far as the Prosecution are concerned. My Lord, that is the position.

THE PRESIDENT: Yes. Very well, then, Dr. Boehm, you can offer those in evidence. SA 91 and 92, did you say?

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DR. BOEHM: Yes, Mr. President. And then I should like to make yet another application with regard to the admission of another affidavit, which comes from Arnold Rechberg. I am trying to prove by means of that affidavit that, contrary to the allegation of the Prosecution, the SA was not a uniform body and that the conspiracy on the part of the SA cannot be regarded as a uniform action. This affidavit mentions that it is quite true that there was lack of unity in the SA in that the National Socialist fighting organization of the SA had been deliberately penetrated by elements faithful to Moscow who were under orders from Moscow, that this had been done before July 1940, and that up to July 1932, 24,000 communists, among them some under instructions from Moscow, had changed over into the SA. It is further stated in this affidavit that this penetration into the SA continued after the seizure of power.

THE PRESIDENT: Has this affidavit been submitted to the Commissioners and has it been submitted to the Prosecution?

DR. BOEHM: Yes, certainly, Mr. President, this affidavit was the subject of examination before the Commissioners, but it was not admitted before the Commission. However, I have the possibility of discussing the document before the Tribunal and of asking the Tribunal to admit it, and I have now made use of that possibility. I wish to base my view on the fact that I want to say that this document is of the greatest value as evidence insofar as the SA was principally constructed on the basis of national trends of thought. Through these indubitably non-national but outwardly differently thinking people, a spirit was introduced in the SA which would no doubt destroy the uniform principles which the prosecution allege and which deprives the allegedly uniform aims of the SA of existence, since the aims of National Socialist thought were no douht quite different from the aims of those people who are discussed in the affidavit.

THE PRESIDENT: Yes, Sir David?

SIR DAVID MAXWELL-FYFE: My Lord, I object to this affidavit as being completely irrelevant and based on sources which have no probitive value whatsoever. My Lord, if Your Lordship has in front of you the proceedings before the Commission, at page 3221, My Lord, there is a summary of the affidavit.

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My Lord, paragraph one of this summary is, "Elements loyal to Moscow infiltrated into the National Socialist Combat organizations, SA and SS, consciously, by order of Moscow."

My Lord, that shows the sort of allegation that is made. It is made by Herr Rechberg who, of course, is a person who shows from the affidavit no possible grounds for any confidence being put in his statements.

My Lord, the same applies to the allegation in paragraph 2 about the 24,000.

My Lord, in paragraph 4, there is some reference to correspondence which took place between Herr Rechberg and Sir Wyndham Charles and Sir William Turral, as he then was. Again I have seen the letters. They are clearly cases of somebody pestering these people with letters and getting a reply.

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THE PRESIDENT: Sir David, in what way does this deponent describe himself? Is he a member of the SA?

SIR DAVID MAXWELL FYFE: My Lord, I just saw the affidavit in German this morning. My Lord, he does not say he is a member of the SA. He is merely a business man who had certain interests in these matters. He quotes two pages which were one a secondary sheet and one a practically unknown German paper, which contained declarations of a Soviet official. It would be in my submission an abuse, if evidence of an unknown German paper, purporting to quote a large Soviet official, were to be taken as a basis in this matter. If it were all based on proper evidence, and if the affidavit was the affidavit of a person who showed he was useful, it would still be completely irrelevant to the question of criminality which is before the Court. I respectfully request your Lordship to uphold this objection, as when it came before the Commission.

THE PRESIDENT: Dr. Boehm, have you anything to say, on this?

DR. BOEHM: Mr. President, I have quite a different view with relation to this mis-statement as made by the Prosecution.

COLONEL POKROVSKY: The Soviet prosecution fully agrees with the competent explanation as submitted by Sir David. I would like to add a few words to what was said by Sir David. Besides the fact that the Commission already denied the use of this document and that it has no evidential value or any relation to the subject, for that reason I would like the Tribunal to know the fact that the fact that the author of this document is a well known person, who has written a number of anti-Soviet documents, for that reason, since the document referred to has nothing in it except anti-Soviet propaganda and falsehoods against the Soviet-Union, it is not directly related to the present affair. For that reason, I would like to bring to the Tribunal's attention our objection to the documents 85, 86, 87, 132, and unfortunately Sir David did not have the copies of these documents. All these four documents, which I have mentioned, refer to 1925, and to the problems of the inter-party strife in Germany. For that reason they do not relate to the present situation. The last document to which we object is document 82 which we have only just heard about for the first time. It mentions a person whose name I do not know, and whom the attorney for the defense says he is a former Communist who gives his

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conclusions on the SA. That man is not in any way competent to give conclusions as an expert on the questions of organizations, which only the Tribunal can decide. That is all, my Lordship, I would like to say.

THE PRESIDENT: Thank you. Do you want to say anything more, Dr. Boehm, before the Tribunal decides?

DR. BOEHM: Yes, Mr. President, to answer what the prosecution have just described it that I intended to misuse the Tribunal and to clear it up. Not only once, but repeatedly, as proven by the record of the 15 December, has it been stated by the prosecution that the SA had been a uniform body, and that as such had been a uniform unit regarding its aims. It is my contention that the contents of these affidavits contradict this point of view. It is quite wrong to say here that possibly the man could not have possibly had the necessary background, because the representatives of the prosecution know, after discussing this affidavit, that the Commission knows of its contents, and they all know the name of this man and know he is in Germany and where he is living, so if there is any doubt against the creditability of this man, then this could have been done today, but obviously it was not done. No reason is given why this affidavit should not be admitted. I am of the opinion as before that such a large number of people, having different political views on different lines, should not be accused on these different aims. I must again request that this affidavit be admitted.

THE PRESIDENT: The Tribunal thinks the decision of the learned Commission was correct, and the document will be rejected, for that reason, and on the grounds that it is irrelevant and the deponent has not stated any grounds for his knowledge. The document is rejected therefore.

DR. BOEHM: Mr. President, in this case I should like to clear up one question, namely, I have not been in a position to deal with all the evidence individually as contained in my document book, owing to the short amount of time to complete it. I should like to put the question whether during the passing of the judgement on the documents it will be made the subject of all legal documents, all the documents which are contained in my document book. Otherwise only a part of the material will be taken into consideration, that to which I attach important value. I am interested in

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seeing that everything is taken into consideration. If I had taken the necessary time required to go over everything and taking everything into consideration, my presentation would have taken six hours. I should like to ask if all my documents become subject to the findings of the Tribunal?

THE PRESIDENT: Perhaps we had better hear from you about this affidavit which the prosecution have objected to, 82, 85, 86, 87 and 132. I take it the Commission accepted these affida vits. Have you got the numbers?

DR. BOEHM: All the documents and affidavits which I have discussed during the session today have been subjected to the examination and discussion before the Commission.

COLONEL POKROVSKY: Evidently there is a misunderstanding in the translation. I mentioned 85, 286, 287, 132. This is not written testimony or written affidavits so it has not gone to the Commission. The last number I mentioned is 82, which was mentioned to ay for the first time.

THE PRESIDENT: What are these affidavits, what are they?

COLONEL POKROVSKY: These are the documents, my Lordship, with the exception of 82 -- number 285, 286, 236, 237. These are the documents.

THE PRESIDENT: The numbers are not coming through accurately on the translating. What are the number? Read it slow.

COLONEL POKROVSKY: 85 --

THE PRESIDENT: 85 did you say? It just came through as 285, you mean 85?

COLONEL POKROVSKY: 85. I keep repeating -- 8, my Lordship, 85.

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Then 286 -- 2-8-6 -- 287, and 132 -- those are documents -- and the last one is 82, which is an affidavit.

THE PRESIDENT: Thank you.

Now, Dr. Boehm, do you want to say anything about this?

COLONEL POKROVSKY: I want to be forgiven, My Lord, for a mistake. The numbers of the documents in my copy were not given correctly. Please correct this. It is 285, nor 85 as I said originally. It will be 285, 286, and 287. We just gave the Secretary of the Tribunal the list of the numbers.

DR. BOEHM: Mr. President --

THE PRESIDENT: One moment, doctor.

The Tribunal will consider the objections on these documents.

And, Dr. Boehm, I ought to give you the opportunity of saying what you wish about these documents.

DR. BOEHM: First of all, I should like to defend myself against the accusation according to which I have not discussed in my document book which I have not discussed with Mr. Griffith Jones, and nothing over and above those documents alluding to it. The documents objected to were included in the document book after agreement had been reached with Mr. Griffith Jones; and Documents 285, 286, and 287 are extracts from findings of the State Court for the Protection of the Republic, and the Reich Court.

The contents are known to the Tribunal. They are in evidence. We are not concerned here with the activities of anyone who participated in the activities on the part of the Communists during the period we have discussed; but we are concerned with a statement contained in the summary of the police presidency in Stuttgart, which corresponds literally with the findings passed with reference to these affairs.

My document 132 is a photostatic copy from the German daily newspaper of a forming-up plan on the part of the communists, who intended to carry out Communistic Putsch plans in Berlin. These forming-up plans are reproduced, and they are commented upon. They show the necessity existing in Germany to create an organiza-

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tion capable of giving protection against such extension; and it is only for that reason that this document, 132, has been included in my document book.

The affidavit No. 87 must be due to a misunderstanding. It, too, had been discussed with Mr. Griffith Jones and Mr. Marreco. That document has been allowed by the Commission.

I believe that the objections which have been raised today in that respect are somewhat belated.

THE PRESIDENT: Dr. Boehm, the Tribunal will take into considera tion the matter of these documents and will let you know their decision.

DR. BOEHM: Very well.

LIEUTENANT COLONEL GRIFFITH JONES: May it please the Tribunal-

THE PRESIDENT: Yes.

LIEUTENANT COLONEL GRIFFITH JONES: My Lord, I have these few documents to put in in rebuttal. My Lord, first I have a document to which Sir David referred in his cross-examination of Juettner the other day, which was not formally put in. It is D-972, which becomes 618.

My Lord, secondly I have a document to put in in rebuttal of a document contained in the SA defense book, SA No. 156, which was a decree from the Munich University Department to the SA, of which, on the face of it, it is clear to say that membership of the SA was compulsory for all students.

My Lord, I have another document which is very similar in character, and based upon the same order of the Supreme SA Command, which was issued by the SA University Department for Cologne. It is dated two days before the Munich Decree which Dr. Boehm put in. I think you have been given copies of translation of both, for your convenience. It will be dealt with later. I would only at the moment draw your attention to Paragraph 3 of each document.

My Lord, taking, if I may, the Munich Decree -- that is to say, the SA document -- Paragraph 3 reads:

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"According to the decree of 7 February 1934, SA Service (SS Service) is compulsory for all German students. In accordance with the decree of the Supreme SA Leadership, F 6914, of 27 March 1934, the ban on taking on newly matriculated students is raised in the period from 25 April to 5 May. All newly matriculated students are therefore bound to join the SA. They have to report at the latest on the 5th of May 1934 to the local offices."

Now, if I might just refer the Tribunal to the similar paragraph in the order issued by the Cologne SA University Department, one sees, at least, that that was not common to all universities. The Tribunal will see that it starts in the same way -- "According to the decree of 7 February 1934"-- the same decree -- "SA service is compulsory for all German students."

My submission is that that SA service referred to there and in the Munich Decree is not membership in the SA, but a course of training run by the SA. If one might draw a parallel, it is practically the same as what we know in England as the Officers' Training Corps in the public schools.

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And then you see, the remainder of the paragraph is considerably different -- "In accordance with the decree of the Supreme S.A. leadership the ban on taking on newly matriculated students is raised." -- in the same period, the 25th of April to the 5th of May -- "Every student is thereby offered the possibility of joining the S.A. The S.A. service is compulsory, but the joining of the S.A., becoming a member of it, is left purely to the student himself. He simply is offered the possibility of joining."

The matter will be lodged by Sir David in his final address to the Tribunal, and I can leave it for a moment by drawing your attention to those two paragraphs. That document will be GB-619. The Munich Decree, of course, is SA-156. And I have a number of short affidavits to put in in rebuttal of the many thousands which have been submitted by the Defense.

Perhaps first, I might draw the Tribunal's attention to those two which Dr. Boehm has asked to be submitted. First of all, to the affidavit of Dr. Staff which is D-946, and I might mention that the only reason that those two affidavits were not going to be submitted by the Prosecution is because they are not actually in the form of affidavits, but a declaration. Some error was made in obtaining them, and they do not show on the face of them that they are affidavits.

THE PRESIDENT: Haven't we already admitted them? Sir David said that he didn't object to their admission.

LT. COL. GRIFFITH JONES: I was only going to draw the Tribunal's attention to the one passage, if I might. I think, taking D-946, the second paragraph is the paragraph from which Dr. Boehm probably hopes to receive some assistance. I would draw the Tribunal's attention to the last paragraph which deals with the S.S. The remainder of the document describes the appalling atrocities which were happening in Dachau in and around the year, 1934. In fact, the last paragraph particularly, "As far as the SS proper is concerned -- in contrast to the Waffen SS, the conditions of which I am not in a position to judge -- the pretext of compulsory membership cannot be credited in my opinion."

And then he goes on to explain why he thinks so.

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THE PRESIDENT: The number of this is SA-91 or 92, isn't it?

LT. COL. GRIFFITH JONES: 91. I had forgotten that they had been given up. And the second one is the affidavit of Dr. Schuhmacher, D-947, which will be handed up to the Tribunal, SA-92. I think the second half of paragraph number one is probably the paragraph to which Dr. Boehm referred. "That voluntary membership remained customary extensively after 1932," but he is dealing now with the SA and the SS. "In a great number of cases membership resulted also from direct or indirect pressure or was the result of personal wrong speculations." And then he says that that is so particularly in the case of the Stahlhelm, and that Stahlhelm consisted of a number of persons who were not National Socialists.

I would draw the Tribunal's attention particularly to the last paragraph, Number 4, of that affidavit which deals with Blockleiters and Zellenleiters. They "were the foundation for the whole system of terrorism, including the activity of the Gestapo."

DR. SERVATIUS: Mr. President, this document which is being introduced is a direct indictment against the political leaders. I object to the uses of that document, but for another reason than the one that has been stated up to now. A number of copies of these affidavits have reached me. They are the outcome of an inquiry which has been made. Some of them are being made available, but it is my point of view that if the result of such an inquiry is being utilized, then all answers should be utilized, and it is my opinion that if one hundred questions and questionnaires were put, then there may be arguments in favor of political leaders contained in those affidavits which are not made available, and I beg, therefore, that if the subject, as such, is admitted at all, that all the results of that inquiry be admitted so that a true picture is obtained which might be more useful to me than the testimony given by my members, because those people who have given these leading affidavits are opponents of National Socialism and I must assume that favorable arguments are contained in those affidavits which are not submitted, which may be very valuable with the entire evidence with which I am concerned.

THE PRESIDENT: The Tribunal doesn't think it is right at this stage of the trial to allow this document to be put in against the political leaders, and therefore the document will have to be excluded altogether.

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LT. COL. GRIFFITH JONES: That, of course, will apply to the other eight or nine affidavits that the Prosecution has. These affidavits were obtained to rebut the vast mass of material which has been put in in the form of affidavits by all these organizations. In actual fact, I can state that there were no other affidavits, other than the ones that I am proposing to put before the Tribunal, and these two which we were not intending to put in, because, as I say, they were not in the form of an affidavit, but there are no other affidavits that we have obtained and they -- all of them, or most of them, deal withone or more or all the organizations. They are put in simply in rebuttal of the mass of material which has been presented to the Court on behalf of the defense of those organizations.

THE PRESIDENT: I think you had better offer those so we may see them. We have seen this one, and we know, of course, from what you have told us that it is one which the Prosecution had before and did not propose to offer, but the others may be different.

LT. COL. GRIFFITH JONES: They are all in very much the same form, and of course, Defense Counsel have had copies of them now for nearly a fortnigh

THE PRESIDENT: Well, you had better offer them to us and we can look at them.

LT. COL. GRIFFITH JONES: And without referring the Tribunal to any particular passage?

THE PRESIDENT: No, I think you had better offer them and refer to the passage, and we will see whether we will admit them.

LT. COL. GRIFFITH JONES: If your Lordship pleases.

DR. SERVATIUS: Mr. President, may I add one remark? These affidavits all originate from persons who are today holding high offices of this state. They are probably the most important ones ever submitted until today and I shall now not have an opportunity to investigate what is being said against them or can be said against them in detail now. I should like to be in a position to go into this question, and that, of course, isn't possible for me to do at this moment. I didn't even know whether they were to be introduced or not, and since I have completed my evidence and am readywith my final plea, it makes it difficult forme.

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LT. COL. GRIFFITH JONES: Might I say this? Sir David, of course, asked the Tribunal's permission to put these in some days ago. The Tribunal will remember ever since then Defense Counsel have had an opportunity of investigating and seeing these documents and Dr. Servatius says that he had no opportunity to investigate, whatever he means by that, these documents. The Prosecution has had no kind of opportunity to investigate the three hundred thousand affidavits that have been put in on behalf of the Defense.

THE PRESIDENT: The Tribunal considers that they better look at them and see.

DR. SERVATIUS: Mr. President, may I draw your attention to a point of mere formality? I haven't got the documents at hand at the moment, but as far as I have been able to see, they are dated after the 7th of May, which was the key date. They were taken after the 7th day. They do not comply with the formalities, either. They were to be taken by our officer, but some of them are only certified before an Advocate, and that, of course, according to the rules passed down wouldn't suffice. I myself haven't been able to introduce any statements at all unless they were certified or sworn before our officer.

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COL. GRIFFITH JONES: Half of them were performed before Mr. Marreco of counsel, whom you know. Others, from the north of Germany were performed before local notaries. Some were performed before Mr. Marecco, who is an allied officer and others appear to be sworn before notaries. As I see it, Dr. Boehm has hopes to put in affidavits which were not signed before anyone.

THE PRESIDENT: I think we should see the Documents before we consider the objection.

COL. GRIFFITH JONES: May I hand you first, B-929, which becomes GB - 620. It is an affidavit by Dr. Anton Pfeiffer, Bavarian Minister of State in the State Ministry for Special Tasks.

THE PRESIDENT: When was he minister?

COL. GRIFFITH JONES: In the year 1933 he was Secretary General of the Bavarian People's Party.

DR. BOEHM: Mr. President, in order to prevent the type of proceedings that are developing on the occasion of hearing ...

THE PRESIDENT: The type of proceedings which are now going on are the type of proceedings which the Tribunal has just ordered. The Tribunal wishes to see the Documents in order to decide upon them. Go on.

COL. GRIFFITH JONES: Your Lordship, in the affidavit here it says that pressure was brought to bear on certain officials to make them join the party, that is civil servants. He goes on in the latter half of the affidavit to state that he and other people had a knowledge about the atrocities that happened in the east and the liquidation of the Jews. He states in the center paragraph, "I am not aware that officials who were party members, were threatened with dismissal from the service if they refused to accept a political Party job, like Blockleiter or Zellenleiter, At any rate I never heard of such a case." I don't think it is necessary for me to read any other passages of this affidavit, No. D-929.

The next affidavit, which I shall present, is D-949, which becomes GB 621. It is an affidavit by the Lord Mayor of the Provincial Capital of Brunswick, in which he describes himself and gives personal data. He then also goes on to describe the activities of the SA from 1921 until

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1923 in the first paragraph marked number one. He then goes on to describe the activities of the SA. In 1933 , he, himself, was removed from his office by the SA. On the next page, he describes how he was led out of the town hall and put into prison by the SA. He states that membership in the SA was absolutely voluntary until 1937 and until 1933 one could assume that many SA members acted in good faith, believing that the SA had a just task for combatting Communism. After the events of March, 1933 there was, in his opinion, no longer any doubt that the SA acted contrary to law, by their participation in the seizure of power by Hitler. He goes on to say how later on the SA distinguished itself in an illegal sense particularly in the persecution of the Jews in 1938.

He deals then withthe SS. He says that while membership in the SS was voluntary and the selection of members was severe, membership in the Waffen SS during the war was often compulsory.

He then goes on in the next paragraph to describe his own illegal arrest by the SS and the appalling torture to which he was subjected by members of that organization. He says, "Before I was ill-treated, I pointed out that I was a war cripple to which Sturmfuehrer Meyer replied that in that case the arm (stiff in the elbow joint owing to a grenade wound) would be spared." He was then beaten with hippopotamus-hide whips until he was unconscious, then he was revived with cold water and beaten again.

The next paragraph of page three states, "The organization and the ideology of the SS were aimed so exactly and so pitilessly at eliminating political opponents and so-called racial inferior persons that everyone who joined it was bound to realize its criminal nature."

I pass on to the next affidavit, which I refer to the Tribunal, D-938, which becomes GB 622. This is an affidavit from Dr. Viktor Fenyes, president of the central committee of former political prisoners of the Province of Hanover. This affidavit deals with the Leadership Corps, particularly the Block and Zellenleiters.

THE PRESIDENT: Will you tell us, before you introduce each one of these affidavits, where they were taken and before whom?

COL: GRIFFITH JONES: My Lord, I am very much obliged, of course. If the Tribunal will look at No. 938 it states thatit was taken before a Notary in Hanover. The previous one states the affidavit was taken on oath

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before a Notary in Munich. It is not written on the copy.

Affidavit D 938 deals with the Block and Zellenleiters and he states there was definite pressure brought on people to join the party, pressure by way of threats. That they assisted in the persecution of the Jewsand that the Block and Zellenleiters participated, without exception, in the setting on fire of the synagogues in 1938. It then deals with the SA, stating that membership was voluntary. He states that former members of the SA who protest they entered the organization under pressure are not telling the truth, as actually everyone was not admitted into the SA. He then goes on to tell of the SS, but I do not think it is important to read it again.

The next document is an affidavit, which was signed before Mr. Marrece, D 931, which becomes GB 623. This affidavit is from the Secretary General of the Bavarian Peasants' Union in Munich, Dr. Schlogl who was a delegate of the Bavarian Diet at the time of the seizure of power by the Nazis.

Dr. Alpis Schlogl, my Lord, was the victim of an assault by the SA. The affidavit deals with the decision of the court concerning the SA men who perpetrated that assault. That is already before the Tribunal as Document D-936, GB 613 and perhaps the Tribunal will remember that because the decision stated that the dealings of the SA men were only aimed at the well being of the National Socialistic movement for political reasons.

Dr. Schlogl, in his affidavit, describes themistreatment he received. He says in the third paragraph, "Following my complaint, the perpetrators were not punished but pardoned, the ringleader Bernhard was promoted as a reward and, as I have been told now, rose to the rank of Brigadefuehrer."

He goes on to say that in his opinionnthe criminal functions of the SA and SS were common knowledge and everyone who joined the organizations knew

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to what use they would be put by the party.

THE PRESIDENT: Perhaps you could just hand them up and not read the documents. Then a decision can be rendered.

COLONELGRIFFITH JONES: Yes, My Lord. I submit Document B-935, which becomes G.B. 624, which is an affidavit sworn to before Mr. Marreco. It is an affidavit by Albert Rosshaupter, Bavarian Minister of Labor in Munich.

Document D-932, which becomes G.B. 625, is an affidavit also sworn to before Mr. Marreco.

Document D-933, which becomes G.B. 626, is an affidavit by Joseph Ackermann, director of Munich, also sworn to before Mr. Marreco.

Affidavit D-950, which becomes G.B. 627, is by Adolf Fahlbusch and was sworn to before a notary in Hanover.

Perhaps I should say that all the affidavits not taken by Mr. Marreco were taken by the Legal Division of the Control Commission of Germany, or were taken under their auspices. This Legal Division of the Control Commission were asked to take these affidavits and they did so in accordance with the regulations set down by the Tribunal.

THE PRESIDENT: Is that all?

COLONEL GRIFFITH JONES: I have one further affidavit of a somewhat different nature, which shows the credit or the value the Tribunal can place on the affidavits which have been submitted by the defense. It is an affidavit of an SS man, who was in an internment camp in the British zone and he tells of the questionnaires which were filled out at the camp. The questionnaire, which I understand the Tribunal allowed the defense council to submit in these camps. This affidavit, which I shall hand to the Tribunal, is D-973 and becomes G.B. 628. It is an affidavit by Mr. Kurt Ehrhardt.

My Lord, he was an SS man who joined the SS in 1933, he never took any part in their activities and was dismissed from the SS in 1937 because he had a Jewish partner and a Jewish brother-in-law.

THE PRESIDENT: I can get all this from the affidavit, I suppose.

COLONEL GRIFFITH JONES: That affidavit does not show on the copy that it was signed on oath and before whom. My Lord, the original shows it was

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sworn before Major Hill of the British Delegation.

THE PRESIDENT: Could you tell me when it was Sir David Maxwell Fyfe offered to introduce these affidavits, or intimated he was proposing to do so?

SIR DAVID MAXWELL FYFE: My Lord, I shall check it during the adjournment I would believe that it was the Friday before last, but, my Lord, it was certainly before I cross-examined the SA witnesses. My Lord, I offered as an alternative either to put the affidavits to the SA witnesses or to put them in after the documents of the defense counsel were presented.

THE PRESIDENT: That is what I wanted to know. That will be in the transcript.

SIR DAVID MAXWELL FYFE: Yes, my Lord. I understand it was accepted and your Lordship asked if there were any objections and there were no objections. I will find it, your Lordship.

DR. BOEHM: Mr. President, I recall this very clearly. These affidavits were brought up for discussion by me during the examination of the Witness, Juettner. Upon my raising an objection, the Tribunal stated at the time that if these affidavits were to be presented, then they must be presented then, because I objected saying that I would not be in a position to prove it contrary to the statements contained in the affidavits when my last witness was heard and I would not be in a position to present any other type of evidence. I considered from the decision passed by the Tribunal that the submission of affidavits by the prosecution should not be permitted once I no longer was in a position to submit any other evidence and the Tribunal agreed with me that these affidavits should be submitted when we were taking the evidence or previously.

THE PRESIDENT: We will refer to the transcript to see what happened.

SIR DAVID MAXWELL FYFE: They were already mentioned before the incident arose. It was in regard to Dr. Hoettl's affidavit that the affidavits were mentioned.

THE PRESIDENT: The Tribunal will adjourn now and will sit again at 2.30.

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AFTERNOON SESSION

(THE HEARING RECONVENED AT 1445 hours, 22 August 1946)

THE PRESIDENT: With reference to the first group of documents which were objected to by the Soviet Prosecutor, the Tribunal thinks that, as these documents had been included in the Document Book for the SA after the agreement and the Affidavit 82 has been allowed by the Commission, in spite of the fact that these documents relate to a remote period, they ought to be allowed. They are, therefore, admitted. They are Documents 285, 286, 287, 132 and 82.

With reference to the 11 affidavits -- perhaps I should say to the 10 affidavits which the British prosecution offered in evidence, the Tribunal has reconsidered the shorthand note which shows what Sir David Maxwell Fyfe said on the 9th of August and what was said on the 14th of August and on the 15th of August, and although there was at that time no doubt a suggestion that these documents might be put in, the Tribunal considers that the question still has to be considered whether the documents ought to be admitted as rebuttal. In view of the nature of the documents, the Tribunal thinks that the documents are not proper evidence in rebuttal on the whole, and that therefore they ought to be excluded. That includes all the affidavits with the exception of the affidavit of Kurt Erhardt, which stands in a different position. In view of the nature of the evidence contained in that affidavit, it will be admitted.

That is all.

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DR. BOEHM: Mr. President, I should like to ask you to lend me your ear but a moment longer. In my presentation of documents, I avoided quoting from my document books but since this morning, the prosecution referred to SA document 156 which is a directive of the schools for higher learning in Munich and put in juxtaposition to another directive given out by the Hochschulamt in Cologne. I should like to refer to the fact that Figure 3 of both of these directives, the same directive of the 7th of February 1934 is mentioned and that when these two documents are put in juxtaposition, it says in each case "For all members of the German student body service in the SA has been made obligatory." In order to make this understandable, on the thing that the prosecutic believed to be a contradiction, I believe that when it comes to the directives issued by the schools in Cologne, I should like to quote --

THE PRESIDENT: The Tribunal will consider the true interpretation. We quite understand that on the one hand you are contending that the service in the SA was compulsory and the prosecution are contending the opposite and they are putting in this other document which they say supports their view. It isn't necessary to have an argument about it at this stage.

DR. BOEHM: Mr. President, I wanted to add but four more words, four words to be added to the last sentence under Figure 3, "or not to study." Then the prosecutor stated today that document 01-----

THE PRESIDENT: Are you saying that there is some misprint in the document or what?

DR. BOEHM: No, Mr. President.

THE PRESIDENT: Then you are simply arguing on the interpretation of the words and I have told you that the Tribunal will consider the interpretation and decide the interpretation for itself.

DR. BOEHM: Very well, Mr. President, but may I mention the next document of which the prosecution has asserted that I submit-

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ted it only because of the last paragraph and that is not correct. The next document, General SA 91, was not submitted by me because of the last paragraph but rather because of the first paragraph. That is the attitude as defined by an Oberlandesgerichtrat in Braunschweig.

THE PRESIDENT: All right. We understand that you rely on the first paragraph and not on the last paragraph.

DR. BOEHM: Yes, Mr. President. Thank you very much.

DR. PELCKMANN: Your Lordship, may it please the Tribunal. Yesterday, on behalf of the SS which I represent, I submitted a condensation of 136,213 affidavits. This compilation I ask not to be confused with a statistical figure of which I said towards the conclusion of the session yesterday afternoon and made the statement that I would submit it without commenting on it. Everything that I mentioned about the testimony and the attitude taken by SA men refers only to the one hundred thirty-six thousand affidavits which contain their own wording and which are actual affidavits. The statistical matter which I mentioned toward the end of yesterday's session, this statistical material is based on a questionnaire and is not to be confused with those 136,000 affidavits which I used. This questionnaire, however, was not asked for my me; this questionnaire and the replies made in answer to it, were not evaluated by me. I merely submitted a statistical report so that all the material which I had received should be disposed of. To get rid of it, this questionnaire is, as I have said, not asked for by me, and the interrogatory mentioned by Erhardt was not asked for by me. It is well known to the High Tribunal that the defense has changed its position internally.

THE PRESIDENT: Yes, we quite understand that it was not quite asked for by you. We accept that.

DR. PELCKMANN: But I should like to clarify matters absolutely by stating that the assertion made by Mr. Erhardt does not refer to those 136,000 affidavits but rather to the answering of a

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questionnaire. The statistical matters which I only announced with three words yesterday and which may be found with the General Secretary, I should like to withdraw as a piece of evidence expressly. I do not put any value on this statistical material.

THE PRESIDENT: Dr. Pelckmann, you are going to make a speech in a few days. Isn't that a matter with which you will deal then? You will have the opportunity of criticizing Erhardt's affidavit. This isn't the time to do it.

DR. PELCKMANN: Mr. President, I believe it is my duty to deal with this affidavit which has been submitted by the prosecution even though the presentation of evidence has been concluded.

THE PRESIDENT: Well, Dr. Pelckmann, I just told you that it is not your duty and you will be able to deal with it when you make your speech and therefore the Tribunal doesn't desire to hear any more about it.

DR. PELCKMANN: In order to reply to this affidavit, in order to present evidence to the contrary, I should like to have two witnesses from this camp summoned before the High Tribunal.

THE PRESIDENT: If you want to make an application, you must make it in writing. Now, Dr. Servatius.

COLONEL SMIRNOV: Mr. President, I ask to make two application on behalf of the Soviet Prosecution. The first one is concerned with the discussion of the appendix of the morning session of April 23, 1946, and of the evening session of April 19th, 1946.

THE PRESIDENT: April what?

COLONEL SMIRNOV: April 23, Mr. President; the morning session, afternoon session and the evening session. The discussion about the appendix to the report of the government of the Polish Republic. I speak about the instruction of the Department of Propaganda in Poland. The witness Buehler declared that he doubted the authenticity of this document and based himself on certain expressions which seemed to him not quite German but alien to the spirit of the German language. By investigating this episode, it appears that the witness had not the German original

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but the appendix which had been translated from German into Polish and then from Polish into English and then from English back into German which, of course, caused a certain chronological mixup. As far as I was informed, Dr. Seidl knows this document and has not opposed against excluding this thought from the minutes because it was caused by the defects of translation. All the necessary documents concerning the application of this have been before the Tribunal.

THE PRESIDENT: I am not certain but I thought we had already dealt with that point, in view of Dr. Seidl withdrawing his objection to that document and perhaps you can find that out afterwards whether we have already dealt with it. There was certainly a document presented to us from Dr. Seidl in which he said, that having checked up on the particular document with which he was dealing, that he was now convinced that it was right.

COLONEL SMIRNOV: Yes, Mr. President. As far as I know, Dr. Seidl does not object against striking out this part from the record because the mixup has been caused by a fractious translation.

THE PRESIDENT: You mean that your application is to strike out Buehler's evidence?

COLONEL SMIRNOV: On the part concerning this document.

THE PRESIDENT: We will consider your application, Colonel Smirnov.

COLONEL SMIRNOV: The second application consists of the following -- In the report of the Polish Government submitted to the Tribunal, in many cases there are not figures of the losses suffered by Poland as a result of the war. This was caused by the fact that at the time when the report was made, these losses had not been calculated and I would like to ask the Tribunal to admit an official memorandum of the Presidium of the Ministers in Poland, which contains all the figures, the complete figures of the losses suffered by Poland during the second World War. The text of this document has been translated into all four languages;

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that is to say, into English, Russian, French and German. That is my second application to the Tribunal. I have no more applications to make, Mr. President.

THE PRESIDENT: Are you suggesting that this is evidence in rebuttal?

COLONEL SMIRNOV: No, Mr. President, it was caused by the inexact translation. This is a document complementing the Polish report, complementing the report of the Polish government, by exact figures of the losses suffered by Poland during the war. It contains data on the military losses of Poland during the second World War in manpower and in material losses. That is a document which doesn't contest anything but complementing the other documents, giving more precise data.

THE PRESIDENT: Colonel Smirnov, the document is dated the 29th of January 1946, and now you are being asked to offer this document in evidence at the end of August 1946, at the very end of this trial.

COLONEL SMIRNOV: Mr. President, this document was given to the Soviet Delegation very late and we needed some time for the translation of this document into four languages and you received it very late.

THE PRESIDENT: I wasn't suggesting that you were in any way to blame, Colonel Smirnov. The Tribunal thinks that this document can't be put in at this late stage, the document which appears to have been made a long time ago and though it may have been received by you recently, it isn't proper that it should be admitted at this stage.

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I submit this document, Mr. President, exclusively for the reason that I consider that the data contained in this document gives an exact image of the losses suffered by the Polish Republic, and that was the reason why I submitted this application to the Tribunal.

THE PRESIDENT: That may very well be, Colonel Smirnov, but the reason the Tribunal rejects it, it is submitted at such a late stage where it is impossible for the Tribunal to go into the facts which are alleged in it or give the defendants an opportunity of contradicting it. We will consider the other matters you have drawn our attention to.

DR. NELTE: Defense Counsel [illegible] Mr. President, since Dr. Servatius, my colleague, is about to give his final plea, I believe I may assume that the presentation of evidence against the organizations are to be considered concluded. Now, I shall like to ask the High Tribunal when the actual time will come for the taking care of those applications for evidence which still have to be taken care of, things which are stilloutstanding. This, of course, is to the individual defendants who, in the course of the proceeding against the organizations, have put forth applications for affidavits or applications of affidavits. Can this be done in this moment, or, Mr. President, when shall it be done?

THE PRESIDENT: Dr. Nelte, the Tribunal understands that you have got some evidence which you have already applied for, which you want to offer. You have it all ready, is that right?

DR. NELTE: Yes, Mr. President, I have already submitted these applications. This application was submitted to the High Tribunal onthe 9th of August. In my case, we are concerned with the matter as to just when the three affidavits of mine can be introduced here.

THE PRESIDENT: Have you got the evidance now?

DR. NELTE: Yes.

THE PRESIDENT: Well, Dr. Nelte, we think that you might offer these affidavits now unless they are objected to by the Prosecution.

SIR DAVID MAXWELL FYFE: There is no objection as far as I know. There is certainly none from Mr. Dodd and myself. I haven't heard from any of my colleagues, but I haven't heard of any objection.

THE PRESIDENT: You may offer them now. With reference to the other defendants, they will ---

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DR. DAVID MAXWELL FYFE: I beg your pardon, there is no objection from either one.

THE PRESIDENT: With reference to the other defendants, counsel will understand that if they have any fresh evidence arising out of the evidence offered by the counsel for the organizations, they must offer that evidence during the course of the speeches for the organizations or immediately at the end of the speeches for the organizations; and that after that has been done, no further evidence can be offered. We will take the offering of your evidence now.

DR. NELTE: These affidavits, however, have not been translated since I only asked to have them translated after I had checked with the Prosecution and got their approval. May I submit --

THE PRESIDENT: You are suggesting that we postpone hearing the affidavits until we get the translations?

DR. NELTE: Very well.

THE PRESIDENT: Very well.

DR. SAUTER: Dr. Sauter on behalf of the Defendant Von Schirach. Mr. President, I still have to submit two interrogatories which were granted me by the High Tribunal, and which have been received in the meantime by me, which I have submitted in due course. One is an Interrogatory with the number 137, Document Book Von Schirach 137, an interrogatory by a certain Guenther Kauffmann who was active in the staff of the defendant von Schirach with the Hitler Youth. This interrogatory in the main deals with the attitude taken by von Schirach to the question of war, his attitude to foreign policy, his attitude dealing with the treatment of Eastern peoples, and his attitude in the Jewish question, and finally, his attitude with reference to propaganda abroad. This interrogatory shall have the number 137 in the document book von Schirach.

The next interrogatory shall receive the number 138, von Schirach. It is a Russian interrogatory deposed by witness Ida Vasseaux, I repeat, Ida Vasseaux, who, in the meantime, has been interrogated once more from this interrogatory. I shall use only two sentences to be found on pages 4 and 5 which I have marked in red in the margin. This interrogatory I referred to shall receive the number von Schirach 138.

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And finally, may I give you the number for another piece of evidence on the 11th of July, 1946. I submitted to the High Tribunal the original of a newspaper "Rhein Neckar Zeitung" of the 6th of July, 1946, together with a supplementary document for the purpose of proving that in the matter of Schirach that thewitness Lauterbacher, who was heard before the court, in the meantime has been adjudged free by an English High Court, in the matter where a certain Mr. Kremer had been accused that the inmates of a penitentiary at Hammen had been decreased by him. This newspaper in the original was submitted on the 11th of July 1946. It shall have the Exhibit number von Schirach 138, I repeat, 138.

MR. DODD: Mr. President, that matter has been raised so many times for Mr. von Schirach that I would like to make the record clear. The time that I used that paper that was in our hands for the purpose of cross examining the witness Lauterbacher, the Tribunal ruled that the matter should not be submitted, or would not be accepted in evidence, and so it never has become evidence before this Tribunal. I pressed for it at the time, I am frank to say, but the Tribunal very briefly, as the later events revealed, refused to have it submitted in evidence. If Dr. Sauter takes pleasure in talking about it once in a while, I have no objection to it, but it doesn't help this court very much, and it doesn't seem to do very much good to constantly bring it up.

DR. SAUTER: Mr. President, this newspaper article which I submitted on the 11th of July bears the date of the 6th of July, 1946, 6th day of the Seventh month of the year. That is a period of time after the witness Lauterbacher was interrogated. Therefore, when Lauterbacher was examined, of course, this material could not have been taken into account, but, however, as far as the judging of the witness Lauterbacher is concerned, it might be important to the High Tribunal to remember that just Mr. Dodd at that time was the one who confronted Lauterbacher with this matter of the penitentiary at Hammen. Lauterbacher disputed this under oath, but the witness, by the name of Kremer, asserted to it his affidavit. This witness Kremer has been sentenced in the meantime, but the witness Lauterbacher has been set free. And I believe that this fact is of special importance to the High Tribunal when we consider the credibility, the reliability of the witness Lauterbacher.

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MR. DODD: I will withdraw my objection. If Dr. Sauter wants to prove that he wasn't hangman, I have no objection to it. I don't suppose it is very important. I won't object to it if he wants to put it in that he wasn't poisoning some people and hung somebody. Von Schirach rejected the document. Now, Dr. Sauter wants to prove that he wasn't anyway. I don't suppose we should object to it.

THE PRESIDENT: He just wants to show that Lauterbacher was freed by some —

MR. DODD: He was freed of the charge I raised against him here. Dr. Sauter is not content with that, he wants to prove it over again. He wants to prove that he wasn't a hangman and not a poisoner. We won't object to that.

DR. SAUTER: Mr. President, of course, I do not wish to prove that Mr. Lauterbacher is not a hangman, and up until now, the Prosecution has not in all seriousness been able to contend that. What I want to prove is merely that the witness produced by the Prosecution is Dr. Kremer, that he was the one who had no credibility, and that he did not tell the truth, and that in the meantime this has been determined by an English court, this question of credibility on one hand, and by Dr. Kremer in his affidavit on the other hand of the witness Lauterbacher who was heard here. That to me would seem to be important.

THE PRESIDENT: What do you want to put in? A newspaper article?

DR. SAUTER: The newspaper has the name --I have already submitted it -- "Rhein Necker Zeitung", R-h-e-i-n N-e-c-k-a-r- Z-e-i-t-u-n-g, of the 6th of July 1946. I submitted this to the High Tribunal on the 11th of July 1946 in due order. Mr. President, I think that will be all I should like to ask as far as evidence is concerned. Thank you very much.

THE PRESIDENT: We will consider it. Now, Dr. Servatius.

DR. SERVATIUS: Mr. President, the English translation which has been completed this morning, and it is quite possible that they are ready now. I am not certain on that point. I have the German text before me, and I gave a copy to the interpreter.

Mr. President, may it please the Tribunal, the Prosecution has proposed to

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declare the "Corps of the Political Leaders" as criminal. Of what is this collective group of persons being accused?

Topics of investigation were the persecution of the Jews, the struggle against the church as well as the dissolution of the trade unions; the incitement for the lynching of flyers who had made emergency landings, the mistreating of foreigners; the arrest of political opponents and methods of their surveillance and being spied upon.

The main point in law of the accusation raised by the Prosecution has to be determined. The accusation is to this effect, that the "Corps of Political Leaders" have collectively committed the deeds mentioned for the unleashing of a war of aggression or that they had banded together in order to commit the crimes of war which have been mentioned.

It has to be established from the beginning that all these deeds which do not concern themselves with these motives or which as individual deeds do not belong to the common plan of the conspiracy are not included in this accusation.

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The major crimes such asthe extermination of the Jews and the killing of political opponents in concentration camps are not crimes against humanity in the sense of the Charter, and the minor measures of spying for election frauds are insignificant in themselves in this proceeding, provided that they were not carried out with the aim of being crimes against international law, crimes against peace, and war crimes as set down in Article 6 of the Charter.

Reference has already been made to this situation in law without its meeting any contradiction. In order to support this opinion, I should like to refer to the Supplementary Berlin Agreement to the Charter of 6 November 1945. Here we are concerned with an agreement of the four signatory powers to the Charter, the sole point of the agreement being the changing of a semicolon to a comma. Through this agreement, we have the correction of the text of Article 6 (c), which had been separated into two parts by the semicolon in the English and French texts. The result had been that crimes against humanity could have been prosecuted without being related to crimes against peace or war crimes which are under the jurisdiction of the Tribunal.

This possibility of interfering with the internal matters of a State without a connection to war does not now apply after Article 6(c) has been drawn up in accordance with the Russian text.

Any interference for humanitarian reasons alone is, therefore, denied the Tribunal.

In all of their basic statements, the Prosecution have continually tried to establish the connection of crimes against peace with the war crimes by proving a conspiracy in connection with allof their allegations.

Who is included in the charges directed against the Corps of Political Leaders?

According to the Charter, it is for the Prosecution to determine that circle of individuals which is to be declared criminal as an organization or as a group. Here the charge is made against the Corps of Political Leaders, according to National Socialist terminology.

Despite the designation which refers to an organization, such an organization did not exist. It was prohibited through a directive from the

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Deputy of the Fuehrer in the Party, Hess, on 27 July 1935 -- Document Number PL 12 -- which expressly prohibited the designation chosen, "Political Organization", for the same circle of individuals. The reason given therefor was that there could not exist within the Party any special organization.

Actually, this circle of individuals were functionaries only, as they exist within every party as leading and executive organs.

But there is no doubt that there are a great number of people, who, because of their titles, must be defined as political leaders. It is not a group which united, for one could not enter the circle of political leaders of one's own accord, but only through an act of sovereignty, through an appointment which took place without any effort on the part of the appointee. The situation in law is comparable to that of every official who through his appointment enters the circle of his colleagues.

How is it that this circle is being narrowed down as a special group?

Beyond the appointment, only through the right to wear the uniform which was connected with it; in addition, we have the oath, but this was nothing special, for allofficials and soldiers had to take it in the same way.

The tasks and activities of the members of the Corps of Political Leaders, however, are completely varied according to their kind and significance. There were political leaders who were active in associations like the German Labor Front and the National Socialist Peoples' Welfare Association, and who in the practical administrative work wore the uniforms for decorative reasons only. These are the members of the various affiliated associations who deliberately are not included in the charges of the Prosecution.

However, there are political leaders who piloted the actual political apparatus. These were the Hoheitstraeger, the functionaries, and the members of the Political Staffs, who are characterized as top leaders or main leaders by the Prosecution.

From the reasons given by the Prosecution for their charge, we see that under the Corps of Political Leaders they mean only these individuals. They are enumerated from the Reichsleiter to the Blockleiter.

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Fromthe affiliated organizations, Political Leaders were included only insofar as they were active in the political staffs which grouped themselves around the Hoheitstraeger, the functionaries.

This circle of persons can be grouped together as a special definable group, in that we have a connection through the relationship of subordination, discipline and business matters.

The number of people thus involved has been set up by the Prosecution to be about 600,000, according to the number of offices existing in the year 1939. As the document used as basis -- Document 2958-PS -- shows, the offices in the staffs are not included. The figures show in addition to the Hoheitstraeger, the functionaries, including the Cell and Block Leaders, there were still about 475,000 of these offices which were filled by political leaders. In this way, the number of political leaders in the political staffs for the year 1939 is increased to perhaps 1,000,000.

As can be determined from Party statistics, because of the heavy turnover of personnel in the period of twelve years, the figure is increased one and a half times; that is, to about two and a half million. In this connection, the fact is taken into account that the number of offices was only half that number.

If you deduct the membership of the Ortsgruppenstaebe, a figure of about one and one half million remains.

Not included in these figures are the office holders from the staffs who were not appointed Political Leaders and those who during the war were charged on an honorary basis with the activity of political leaders in subordinate positions; above all, they were the Cell and Block Leaders during the war. According to the testimony given by witnesses, their number may be estimated at 600,000. If, Like the Prosecution, you include these individuals in the circle of political leaders, then the entire figure of the individuals involved rise to 2.1 million. This figure rises still more because there were other office holders in the political staffs who were not appointed political leaders.

Through the fact that the charges raised by the Prosecution is restricted to political leaders, a part of the people in the political staffs are not included. They were those who were not appointed political leaders even though they held office.

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An extension of the charges to apply to these persons cannot take place subsequently without detriment to those so involved, since the possibility of an application for a legal hearing was not given them in the first publication by the Tribunal.

Before the question can be dealt with as to whether the group so defined is to be declared criminal, the admissibility under international law of the charges must be discussed.

According to the Article 50 of the Hague Rules on Land Warfare, a collective punishment of the population is admissible only when the population is considered jointly guilty for individual deeds. This is an exceptional regulations which serves solely for theprotection of the occupying power.

In that way a similar measure is prohibited for general political reasons. You may not punish a group just because the guilt for a war is imputed to its members, or because you hold them responsible for moral resistance. You can not arrest all political commissars or Jews and sentence them because of their political attitude. This prohibition of the Hague Rules on Land Warfare is based on the penal, individual principle of democracy, which has not lost its prestige.

Whether the charges of the Prosecution are legal or whether the Charter hasmade Article 50 of the Hague Rules on Land Warfare invalid--that has to be examined officially.

If you consider the proceedings admissible, then we have to examine whether the participation in guilt of the group can be considered proved. How such a proof is to be produced neither the Hague Rules of Land Warfare nor the Charter indicate.

We can follow two principles: Either that of justice or that of expediency.

The principle of justice demands proof of individual guilt, and the sentencing of a group is to be rejected, "even if there is only one just man among them." The principle of expediency admits the possibility of the innocent ones being included, but one prefers to punish the guiltless rather than to let the guilty ones go unprosecuted.

The Prosecution has stated repeatedly that the aim of the Indictment was only to punish the guilty ones and not to set a trap for the guiltless

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ones or to catch them, too, in one net.

These words are in accordance with the principle of justice, but the request itself to characterize the group as criminal rests on speculations of expediency. This apparent contradiction can be solved only by requesting the verdict of the Court as a means of procedure to answer an emergency.

In the preliminary proceedings, it is true, a part of the innocent people wereincorporated. However, in subsequent proceedings they should have all the right to make objections, as Justice Jackson has stated.

By its order of 13 March 1946 the Tribunal, on the occasion of stipulating the procedure for the taking of evidence, expressed itself in a sense which might make possible a determination for the decision itself. The final influence in regard to the later individual proceedings, however, has not taken place. The decision of the Tribunal in this regard must depend essentially on the results which its verdict will have.

Therefore, Law Number 10 of the Control Counsel of December 20, 1945, is of theutmost importance. It appears from the text of thelaw that mere membership in an organization or a group which has been declared criminal will necessitate punishment. If that were the case, the inclusion of the guiltless ones in the present proceedings would constitute a severe break with the guilt principle which forms the basis of modern penal law.

Such an interpretation would not be compatible with the text of the Charter. Through its Article 10 declares the objection that an organization was not criminal as inadmissible, it admits to anyone the objection that he was not acquainted with the criminal character.

It follows also from Article 11 of the Charter that a sentence is contemplated only in the case of participation in the criminal activity. The informed press and the radio have expressed themselves in the same vein.

The question arises, what factors make for the criminal character of the group which are decisive for its judgement. The position of the Tribunal can be learned from its ruling of 13 March 1946. The essential factor is the participation in the conspiracy. This presupposes the formation of a group for the commitment of an act which has been declared

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criminal by Article 6 of the Charter. Such a formation, however, in the case of every conspiracy is based on the concrete knowledge of the contemplated crime.

The Prosecution suggests this knowledge with the assertion of the obviousness or the comprehensive inf mation available to the political leaders.

The persecution of the Jews and of the churches were obvious merely as general tendencies. The criminal excesses emerging fr m there were not known.

The following is important in this connection: The thing that matters is not the obviousness of facts but the obviousness of motives. As far as we are not concerned with genuine war crimes, the motive of the aggressive war must be known; the acts must be recognizable as the first stage of an aggressive war. Only by that can the participation in the criminal conspiracy be carried out.

The Prosecution concludes that these motives were self-evident for the people concerned onthe basis of the doctrine of National Socialism. There, it is claimed, the aims were given which of necessity led to aggressive warfare. Therefore, the building up of the Party and the soliciting of members, as well as the seizure of power, became criminal, based on the motive of aggressive war.

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It is claimed that an organization consisted for the conduct of unagressive war or for the commitment of war crimes.

Is such a conclusion correct?

As a manual, the political leaders had the Party Program and the book "Mein Kampf".

The Program of the Party had been attacked vigorously by domestic opponents, but it had not been objected against by any foreign sources. In 1925 the High Inter-Allied Rhineland Commission in Coblentz had approved of it for the Rhineland and later the League of Nations had done likewise for Dantzig. The Party was permitted including its philosophy as expressed in the book "Mein Kampf". Besides it was generally known that Hitler had declared that his book was out of date in many points.

It is true that the goals aimed at by the Party could lead to a war, and it is also true that a war which aims something which infringes on the property of someone else, must include the attack on such property.

But the slogans "Lebensraum" (Living Space) and "Los von Versailles" (Off with Versailles) were not bound to lead to aggressive war, just as little as the slogan "Workers of all countries unite" must lead to aggressive war. There is the method of negotiations by appeals to reason. Just as in the interior of a state strike, uprisings, and revolutions may be justified for workers in their struggle for existence, so in the life of nations it may happen that war will ensue. But the normal way is that of negotiations. If it weren't so every member of an opposition party could be prosecuted for high treason.

Whether actually an aggressive war has been conducted, which was obviously transgressing the technical concept of opening the hostilities has been doubted in the earlier part of the proceedings by many of the main defendants and with many important reasons.

If Hitler demanded living space, the customs of the war shows that other states took it without condemning the principle which supposedly as a "law of life" is the basis of the aggressive war. The archives of the world remain closed.

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For the defense it matters less to determine whether we had it to do with an aggressive war, but rather whether the political leaders knew of it and whether this was obvious to them.

It is just the facts which speak vividly against the obviousness of aggressive intentions, because to every political leader Hitler's offer to disarm down to the last machine gun must have been impressive, and also this repeated declaration that the misfortune of other peoples could not bring good fortune to the own people, but rather that the welfare of all should be the basis of international life. Impressive must have been the naval agreement with Great Britain, the declarations given France of not having the intention to raise further territorial claims, the Munich Pact, and finally the Treaty of Friendship withthe Soviet Union. Particularly the latter caused a wave of rejoicing because it seemed to be about peace with that adversary which had been theretofore called the worst enemy. Just that treaty at the same time proved how impossible it is to derive from the book "Mein Kampf" any directives for the actual practice.

To judge the rearmament of Germany as far as the political leaders are concerned, the outstanding factor is Hitler's repeated declaration that the "Buendnisfaehigkeit" (ability to conclude agreements) could be established only by the equality of armaments. The extent of the rearmament was not recognizable in relation to the strength of the adversaryand Hitler himself had declared it to be fully that a small state should challenge all the world.

The cornerstone of allpolitical leaders' conviction that no war was planned, however, was the fact stressed again and again that Hitler himself had been a soldier on the battlefront of the First World War. Therefore, it was not to be expected that he should bring about the suffering of a new war.

Thus at a Party rally in1936 in Nuernberg at the occasion of an appeal directed exclusively to the political leaders he literally stated:

"During these long years we had no other prayer than 'Lord, give to our people domestic peace and give it and maintain external peace! In our generation we had so much of fighting that it is understandable when we

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long for peace.... We desire to plan the future of the children of our people, we wish to work for the future to safeguard not only their future live but to make them easier too. Behind us is so difficult a fate that we have only one request that we can address to the merciful and benevolent providence: spare from our children that we had to suffer! We desire nothing but peace and tranquillity for our work."

These words were directed to the very same men who now as political leaders are hit by the indictment.

The thought of war was opposed by strong fundamentals for a positive policy of peace. For all those who fought for Socialism and who believed in the realization of peace plans, the fact that Hitler himself had been a worker was standing in the foreground. The elimination of unemployment appeared as the greatest accomplishment of peace; a success which was convincing for everyone who regained employment. It was not Hitler's demonic magic which brought seven millions of unemployed and the same number of partially employed people with their families to his ranks, but the fact that he gave them again work and bread, that was the thing that conquered the masses.

It cannot be denied that the position of the worker was improved beyond the mere existence and that his social standing was raised. When war broke out the universal old-age insurance system, a big social undertaking was in the process of being built up. To the political leaders that did not look like aggressive war.

There is yet another important ground which contradicts the obviousness of the occurrences and their motives; it is the system of secrecy.

From the taking of evidence the Tribunal is acquainted with the means of secrecy. I would like to stress another point of view which aided in a peculiar manner that system of secrecy; it is the confidence which Hitler enjoyed.

This confidence was nourished from the huge resources of social success which he had accumulated by the elimination of that unemployment which had brought the people to the brink of ruin. One had to add to that the success in the field of foreign policy which had been recognized by foreign powers, too.

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Both was supported by the traditional authority of the state and by emphasizing that tradition. These are both factors which have much influence on the people.

One has to add to the then unknown frankness of language in matters of foreign policy which the French prosecutor has called "naivité". This frankness established domestically the conviction that Hitler would not instigate anything secretly. That picture was rounded out for the millions of followers by the facade of respectability and dignity which was kept up by that circle around Hitler from which one could have expected first criticism and warning.

From all that one has to conclude that the political leaders could not gain knowledge of the aggressive intentions.

Equally the assumption by the prosecution that special information about the plans had been given seems to be untenable on the basis of the evidence submitted during this trial. That assumption of the prosecution presumably rests on the original theory that it was a part of the normal business routine to inform all Hoheitstraeger while it has been established by now that only a very small circle was initiated.

The situation is different in regard to the war crimes. Here the thing that matters is not the proof of the motives of known happenings, but the knowledge of the facts themselves. It is certain that the war crimes due to their abominable motives were kept secret as a matter of course. The Tribunal has learned in the course of the taking of evidence of the circle of silence which was drawn around the most horrible atrocities. Other war crimes which have been made part of the indictment are individual cases which were not publicly known. In connection with the individual points we shall dwell on these accusations.

The prosecution has submitted a number of happenings which on the basis of the Charter cannot be considered crimes.

Evidence has been given concerning the building up of the Party, the seizure of power, and the maintenance of power. These are facts that have not been denied, as a general rule. The creation of a dictatorial state and the prohibition of other Parties is a home policy measure which every state may take according to its judgment.

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To prove that these methods were created for a war of aggression and that they are therefore criminal is an unnatural construction of facts. Any proof for such an assumption is lacking.

A dictatorial construction of the State may be necessary for the building up of Socialism as well as for a war of aggression. Thus, the orientation of economy can serve good as well as evil.

The British prosecutor has shown us another point of view. He has stated that intervention against their own government is possible in order to protect Nationals. This conclusion he draws from the fact that even war should be waged out of humanitarian reasons.

The statutes do not permit such an intervention, as has already been stated in the beginning. Even International Law does not recognize a right of intervention upon

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moral grounds. Crusades are not permissible.

If the so-called methods of the Party are here being commented upon it is because the misuses are being connected with the crimes in the charter.

Four documents have been submitted referring to Political Leaders and concerning the pressure exerted upon voters.

The most important one is Document D-43of the year 1936. It concerns a inquiry of the Minister of the Interior of the Reich as to which officials did not fulfil their obligations to vote. The Ortsgruppenleiter are asked to comment upon this. This is a letter of the Kreisleitung (the Kreisleiter office) in Bremen. Another Kreisleiter, the witness Kuehl, declared before the Commission (Record page 1907) that he did not receive such an inquiry. The general character of this inquiry is thus put in doubt.

One document, R-142, dating from the year 1938, is but of local importance. It originates from the SD Sector Koblenz, and mentions the statement of the District Manager (Kreisgeschaeftsfuehrer) about the reasons of the bad election results due to quarrels of a personal nature. Both documents deal with the results of the election after the vote.

Two further documents - D-897 and D-902 - of the year 1938 are letters exchanged between the lowest offices of the SD in Erfurt and concern election control. The closest cooperation with the Ortsgruppenleiter is advised.

As far as the proceedings against the Political Leaders are concerned it is shown that the commanding agency of the Party in no way enters into action.

These are merely individual measures of other agencies. No general practice or knowledge can be deduced from that.

Spying is another count of the indictment.

This count originated in a page of the Organizations Book, page 101 of the 1940 edition, in which it is said that the Blockleiters should report anyone spreading dangerous rumors. In this connection the household card indexes were established which, in the Gau Cologne, contained extensive measures of surveillance.

The question is now whether this was generally done by the Political Leaders in this manner and whether it was done in conformity with theinstructi

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of the Party agencies.

The instructions of the Party to the Political Leaders are to the contrary. See Decree No. 127 of the 5th of October 1936 in the orders of the Fuehrer's Deputy (Document No. P.L. 34).

The witnesses examined in connection with this question have testified that these instructions were followed and that the indexes they know of were not of a spying nature. It is thereby proved that the system of the Gau Cologne was not generally followed and that it was not valid for all Gaus.

In this connection we must particularly point out the testimony of the witness Dr. Kuehn who, as the counsellor of the Superior Provincial Court (Oberlandesgerichtsrat) was competent for the Heimtueckegesetz in the Ministry of Justice.

The witness declared in the interrogation of 10.7.1946 that proceedings were generally taken up upon the denunciation of inimical neighbors or others, and only very rarely upon the instigation of Political Leaders. The only concrete testimony of spying submitted by the prosecution is Document D-901, in which a Blockleiter and janitor of the Assembly Hall reports a secret meeting of the members of the Confessional Church in his building.

The causation of protective custody and confinement to concentration camps is coupled with the count of spying.

That political adversaries of a State should be declared enemies of the State and taken into custody seems to be a custom adopted by politicians. It is based upon reciprocity and represents retaliation for the losses in the political struggle.

A connection with war of aggression is not established. The count of indictment of the prosecution will, therefore, be directed rather against misuses incurred through excesses and atrocities.

Not the Party was competent in this field, but the State agencies.

According to the orders of the chief of the Security Police and of the SD of 10.3.40, Document P.L. No. 100, arrests were made solely by the Gestapo. Any intervention on the part of Political Leaders was strictly forbidden (P.L. No. 29). In this manner secrecy was assured from the beginning.

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The real conditions in the concentration camps were concealed from the political leaders through the fact that even after their release the political prisoners and their families had to remain under surveillance, and that this order was carried out. This is Document P.L. No. 100, which created such astonishment in court today. The witness, Count von Roedern, testified before the Commission concerning the knowledge of the conditions in the concentration camps. He said that in the beginning of 1943 the county group leaders of the Foreign Organization had visited the concentration camp at Sachsenhausen, and had gained the impression on that occasion that the rumors about the concentration camps circulating abroad at that time were without foundation. (Commission record page 1897).

The witness, Sieckmeier, states in affidavit P.L. No.57 that in the Spring of 1939 he visited the concentration camp Buchenwald with 150 American guests, and the witness Wuensche states in affidavit P.L. No.57B that in June of 1938 he visited the concentration camp Sachsenhausen with a class of the Berlin Zollschule (School for customs officials). Both state that the quarters and the food of the prisoners were in conformity with the regulations. Thirty five further statements of political leaders who had visited such camps are contained in the collective affidavits. They are all of the same effect.

14,763 statements summarized in Affidavit P.L. No. 57 show that these political leaders knew nothing of the conditions in the concentration camps, and that upon inquiry they received no answer in seven cases, and that satisfactory answers were received in 102 cases.

Then documents concerning mercy killing were presented in evidence by the prosecution.

It is shown that the political leaders had no part in the carrying out of these measures, and that they had no general knowledge of them.

Document 630-PS, a letter of Hitler's of the 1st September 1939 proves that it is a so-called special secret order, which was given directly to the Reichsleiter without portfolio Bouhler, and Dr. Brandt. Neither the Reichsleiters nor the Gauleiters were told of such special secret orders (Document 594, Affidavit Hederich).

According to Document D-906, Nos. 3 and 6, the medical commission

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concerned seems to have taken up contact with the Gauleiter or Kreisleiter in individual cases. It is noteworthy, however, that just in the last document it is noted that the Hoheitstraeger (Bearers of Sovereignty) are not involved since the regulations do not contemplate this.

Confirmation of these facts is given by the collective affidavits P.L.59 of Karl Richard Adam, who states that 7,642political leaders executed affidavits to the effect that they had received no orders, and had not been involved in carrying out of such measures.

Great precautions had been taken to keep these facts a secret; but nevertheless some knowledge was gained of them, and rumors were circulated. This is borne out by special notes recommending secrecy in the incriminating documents. The witness Meyer-Wendeborn stated before the Tribunal that upon his inquiry he was told that these were but rumors. Two medical men, Dr. Engel (P.L.59B), and Kreisleiter Dr. Dietrich (P.L.59C) confirmed the officia denial of the mercy killing.

Were these measures in any way connected with the conduct of the war?

Itis certain that in 1934, already, Euthanasia was being discussed as borne out in document M-152.

Carefully worded articles were published in the press, which encouraged this idea from the viewpoint of "Natural selection "(Zuchtwahl) and which pointed out the custom in ancient Greece of exposing and abandoning the unfit.

A connection with belligerent intention is difficult to established even though a member of a Gautabe defines mercy killing in case of war as war measure in Document D-906.

I now come to the events which appeared openly: smashing of the unions, persecution of the churches and persecution of the Jews.

The "smashing " of the free trade unions was well know. It was a revolutionary act. It was admissible or inadmissible, like any revolution. It was an event which happened only once-- for which the responsibility is clear. The Political Leaders did not have a direct part in its execution, but they knew the event and approved it.

It is to be examined whether it was a measure anticipating war, or whether other reasons were decisive.

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The 150 large and small unions, which included 30% of the workers, were already at the end of their strength before they were dissolved. Economically, the majority of them were facing collapse; the many years of unemployment had depleted their treasuries, but increased the demands upon them. The political parties which dominated unions had been helpless in the face of the economic crisis; they had been powerless against Hitler, and so resigned. Mass withdrawals which took place at the end of 1932 and at the beginning of 1933 had thus made the unions merely shadows. On the other hand the workers transferred to the NSBO, thereby aligned themselves with the idea of labor peace and of community which was recognizably

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ably preparing the way for the solution of the economics crisis.

In a similar way the employers' organizations were compelled to maintain in labor peace, and were dissolved.

The purpose of the elimination of all organizations was to reach a settlement between labor and capital; the class struggle was replaced by the duty to care for the workers on the one side, and the duty of loyalty on the other side. as keys to the elimiation of the economic distress.

That the proceeding was so understood and approved by the workers is shown by the circumstances of frictionless cooperation; thus the economic-political proceeding was justified after the event.

Then there is the incriminating question of the church question.

That the churches were at variance with National Socialism is well known. That the causes of this quarrel were that the churches were opposed to an intended war of aggression is unknown.

After power-political differences at the beginning it was later reasons of Christ morals which increasingly called the Church to fight against National Socialism. Generally, the churches were indifferent to the foreign policy of States accordin to the principle, "To the State that which belongs to the State."

Conflict with the Church was contrary to the Party program, and Hitler himself never preached it. He would probably have preferred to win over the churches. He tried to do so through the Concordat and had successes through the proclamation of the Fulda Conference of Bishops and the proclamation of the Austrian Bishops after the Anschluss.

The propaganda against the Church was limited and was directed against the members of the clergy who interfered in politics. There was no real organized fight agains the Church. The separation of Church and State was demanded in order to overcome the splitting of the people by the various Confessions.

Thus, Hitler in 1933, immediately after the seizure of power told the witness Count Wolf-Matternich that it was inexcusable if the Christian Church was combatted (affidavit P.L. No. 62 c.), and the witness Theology Professor Fabricius confirms this attitude. (Affidavit P.L. No. 62 a.).

For the Political Leaders this conviction manifested itself in the fact that even before 1933 some theology students, theology professors, and churchmen had joined the Party. After 1933 there was a strong movement for rejoining the Church among

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those who had left the Church under the influence of Marxism; there were many retroactive marriage and Christening ceremonies, which is shown by Affidavit P.L. 62a and 62b - Prof. Fabricius and Theologian Buth.
The witness Shoen confirms an affidavit, P.L. No. 62, that of 500 Political Leaders whose statement he examined 42% simulataneously held Church offices. The witnesses Wegscheider and Kaufmann, who were examined before the Tribunal, also testified that numerous Political Leaders held a Church office. The Bishops Dr. Groeber and Dr. Berning were appointed to the State Council (Staatsrat) that is the affidavit Count Wolf-Metternich, P.L. 62 c.

The actual picture is shown from the comprehensive affidavit of the witness Schoen (P.L. 62) who, in the examination of 21, 131 affidavits, noted that in theindividual Ortsgruppen (Local group) church life remained undisturbed and that the Party participated in Church life occasionally officially, and, in some cases, in uniform. Thus, in the individual local groups there was a good relationship with the clergy, and this was expressed publicly at celebrations.

On the other hand there was a battle lead by a small anti-church group whose activities and statements are in contradiction to the general Party line. The leader of that group was Bormann.

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Of 23 documents which were submitted by the prosecution against the Political Leaders on the church question, no less than 9 documents are ststements of opinion by Bormann. Seven documents concern the SS as well as the SD and the Gestapo. Four documents deal with three local occurrences, and one document consists of the personal opinion of Gauleiter Florian. There follows a quotation from the "Mythos", and a document with directives for the RAD.(Reich Labor Service)
All these documents do not show that the Political Leaders on the whole participated in the elimination of the Church.
I comment on the individual documents:
The document containing the most serious charge is the secret decree of Bormann to the Gauleiters on "National Socialism and Christianity". On this subject there is an affidavit by the witness Haderich, according to which Bormann issued this decree independently and Hitler instructed him to recall and destroy this circular. The witness Gauleiter Kauffmann confirmed before the Tribunal here that this decree was recalled. The same thing is shown by the testimony of the witness Hoffmann before the Commission on 3 July 1946. In affidavit P.L. 62 b the witness Buth states that the defendant Rosenberg likewise rejected the decree and prepared an objection.
A Document 098-PS is a letter of Bormann to Rosenberg and deals with a so-called National Socialist Catechism. It is a personal opinion of Bormann. There is no answer of Rosenberg at hand.

In this letter a meeting of the Reichsleiters is suggested. The affidavit of the witness Hederich states that such a meeting never took place.
There follow a number of documents which show Bormann's constant personal urging towards the separation of Church and State. Document 070-PS regarding school devotions lies in this direction; as also Document 840-PS. admission of theologians into the Party; and 107-PS, directives for the participation of the RAD in church ceremonies.
The following documents, 100-PS and 101-PS, are letters of Bormann to Rosenberg expressing the wish for their own literature for soldiers: Rosenberg is here attackedbecause of the attitude which he took in favor of a book in a religious vein by Reichsbischof Mueller. This proves Bormann's purely personal activity.

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In the same field there is Document 064-PS again a letter of Bormann to Rosenberg. It demands comment on an inclosed letter of Gauleiter Florian of 23 September 1940, who had objected to a religious writing by General Rabenau. It is a personal opinion which is not typical of the general attitude of the Political Leaders.

A further action of Bormann is shown by Document 116-PS, a letter to Rosenberg of 24 Jan 1939 on the curtailment of the theological faculties. Here Rosenberg is not instructed to execute curtailment as the prosecution erroneously assumes; but another letter is merely sent to him for his information, in which a curtailment of the faculties was welcomed.

The continuation of Rosenberg's efforts of spreading his opinion is shown by a letter of Bormann of 17 May 1939 to Rosenberg. Here Bormann sends a plan of the Reichs Education Minister on the limitation of the theological faculties. Likewise, only with a request for his opinion, and not, as the prosecution assumes, for the immediate execution of the measure under consideration.

Then the Political Leaders are charged with the activities of the Gestapo on the basis of the files of a conference of church specialists of the Gestapo.

This cannot be taken as evidence of proof of the anti-church attitude of the Political Leaders.

Nor did the Political Leaders have any direct connection with the confiscation of church property.

The submitted Document R-101 (correspondence of the RSHA) shows confiscation by the Reich Governor and Gauleiter and by the Eastern German Agriculture Company, (Ostdeutsche Landwirtschaftsgesellschaft GmbH)

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in the Warthegau. Both acted in their capacity of state agencies, so that this is not a general measure with use of the Party machinery and knowledge of all political leaders.

Document 072-PS, a letter of Bormann to Rosenberg of 19 April, 1941, expressly emphasizes that it is not the affair of Political Leaders to confiscate Church property.

There follows the public actions against the Church, brought out by the prosecution. Documents 848-PS and 849-PS deal with excesses against Bishop Sproll in Rottenburg. It transpires that this action was carried out by forces foreign to the local Party.

Document 1507-PS deals with incidents on the occasion of a sermon by Cardinal Faulhaber at Freising. The records show that the Political Leaders were given explicit instructions not to interfere with the religious services held there, even if Cardinal Faulhaber should deliver a sermon against National Socialism. Actually, there was no interference with the service by Political Leaders. It is noteworthy that according to the records, Cardinal Faulhaber declared himself willing to officiate a few months later in the same church, " through the mediation of Mayor Lederer of Freising, who was at the same time Kreisleiter and Standortfuehrer of the SA."

This shows that the measures appear more extensive than they were in reality and that the Political Leaders could not have had any real picture.

Nor could the "Mythos" given them any explanation on the Church question. This book was hard to understand and never received the official Party stamp of unobjectionability. The witness, Count Wolff-Metternich, has stated that Hitler expressly called the book a private work of Rosenberg, which did not please him. That is Affidavit P.L. 62 c.

The persecution of the Jews was the most obvious event. It can be explained quite apart from war of aggression. The events are known: Economic driving back of the Jews, defamation by the Jewish Star, and elimination from social life, the issuance

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of the Nurnberg laws, evacuation toward the East, and, finally, extermination. Here we can only investigate the extent of the accurate participation of the Political Leaders and their knowledge and the type and scope of the measures.

The legal measures were taken without consulting the Political Leaders. Insofar as they tended to restrict the influence of the Jews, they were welcomed by them and corresponded with the Party program.

Nor was there objection to the Nurnberg Laws, but the Jewish Star was considered disgraceful. There was opposition to the confiscation of property and the evacuation.

This history of the 9th of November, 1938, is known to the Tribunal through examinations of witnesses. It was a surprise manouver prepared by Goebbels during the absence of the Gauleiters from their Gau. Because of possible opposition, the Party machinery was circumvented. As far as the political leaders had the possibility of taking any action, many Gauleiters refused to carry out the orders or issued counter-orders, as soon as they learned about the foreshadowed action. The witness, Gauleiter Kaufmann, has confirmed this for Hamburg. This witness, Gauleiter Wahl, has testified the same before the Commission for the Gau Schwaben; and the attitude of the Gauleiter for Koblenz - Trier is contained in Affidavit PL 54-P.

As far as the Kreis and Ortsgruppenleiter is concerned, a planned use of the political leader has also not been determined. All witnesses' testimony confirms here the surprise, opposition, and discrepancy of their actions.

Hitler refused, Goering refused, and even Heydrich declared before the Gauleiters and Gau judges on the 20th of November, 1938, that the severest measures would be taken against all concerned. The report of the Supreme Party Judge Buch, produced by the prosecution, according to which the punishment was a mere farce, was unknown. The leniency of the Tribunal had been explained by stating that the man of the street could not be condemned as long as the instigator, Goebbels, remained free.

The refusal to accept any forceful solution, following those events, led to belief in the sincerity of the resettlement plans, which in reality proved to be preliminaries of extermination.

Then, the decision for the extermination order was unknown. The affidavit signed by Witness Albert, P. L. No. 54-h says that Himmler pretended even in 1942 in a memorandum that he endeavored a legal and humane solution of the Jewish problem at a cost of twenty-five to thirty million marks.

The apparent reason for all these measures was not for the purpose of war, but exclusively for the solution of the racial question. The real happenings in the East came down to us as remote rumors and were not given credit because of their monstrosity, but were considered as enemy propaganda. In this connection, the "explanation" issued by the Party Chancellory on October

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9, 1942, is significant. This is Document P. L. No. 49. Here, the political leaders were told the atrocities were not true.

Document D-998 containing the periodical "Die Lage" of 23 August, 19[illegible], mentions the Jewish problem in Hungary. The actual events were not referred to. Because of its small circulation and the fact that this article appeared only toward the end of the war, it is not bound to effect in any way the basic opinions of the public.

The bulk of the political leaders' ideas on the Jewish question, irrespective of their rank and district, is clearly shown by Affidavit PL 5[illegible], which contains a summary of 26,000 sworn declarations.

The last question to be examined is the indictment of the political leaders for war crimes.

At firstappears the Jewish question, against insofar as foreign Jews are concerned.

Knowledge of events taking place outside the Reich territory cannot be supposed of the majority of political leaders. The Press announced that governments of other countries, such as Hungary, France and Italy, took measures, similar to that of the Germans. What happened in reality was unknown in Germany. Document PL-No. 49, Confidential Information issued by the Party Chancellory dealing with the details of October 10, 1942, concerning Rumors regarding the Situation of the Jews in the East, was destined to cover up and deny thefacts.

Concerning the Germanization of Slavic territory, three documents have been presented to the Witness Hirt before the Tribunal.

Document U.S.S.R. 143 concerns the removal of Slovak street names and the use of the German language for officials. Thorough an examination, however, shows that this was a measure of the Styrian home union (Heimatbund) which issued circulars to its local sections. This was not a party organization. These events concerned the little town of Pettau, which was inhabited by Germans before the 1919 peace treaty.

Document USSR-449 too deals with recovery work in Carinthia and Krain, which formerly was inhabited by German settlers, and Document USSR-191 shows that these were measures taken by the SD in the border regions of Styria.

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All documents lack the basis for alleged knowledge of these measures, the carrying out of which remained unknonw tn the political leaders.

Charges against the political leaders concerning the Administration in the East are dealt with at considerable length. Whether these charges are generally justified, cannot yet be judged on the basis of proceedings so far held. It can, however, be examined what knowledge the political leaders had of these events and in how far they were responsible for them.

Document 1058-PS contains Rosenberg's speech before the beginning of the war in the East. His defense counsel has commented upon it in detail. This speech was secret and known only to a small circle.

Document L-221 of July 16, 1941, concerns the Crimea. These are secret marginal remarks of Bormann concerning a discussion in the Fuehrer headquarters.

A memorandum concerning a conversation between Rosenberg and Hitler on the Crimea is likewise unknown to the public.

From Frank's Diary derive the charges against the political leaders on the food situation in the Government General. General knowledge of the fact that during the year 1941, 40 per cent of the population suffered from malnutrition because of the political leaders' measures, cannot be supposed. As far as food supply difficulties had become known in the border countries, they might have been brought about by other causes, especially after a lost war.

Document R-36 shows Bormann's Frightful Views on the treatment of the population in the eastern territories. It is the position taken by Dr. Markull, of the Ministry, for the occupied territories in the East, dated August 19, 1942, addressed to Rosenberg. The open and severe terms, as well as the indignant opposition with which it was met, prove that Bormann's views were not accepted and that other measures were taken. The fact particularly that this was put before Rosenberg proves that there was no doubt about his consent with the refusal.

Other incidents became known to a large number of people. Document 1130-PS contains the repeatedly quoted speech of Reichsleiter Koch held in Kiev on the 1st of April, 1945, on the subject of the Master Race.

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The evidence shows that Koch himself knew that his opinions were not shared. He said that his chiefs of sections could be divided into two groups, the one working against him openly, the other secretly.

Document R-112 contains decrees of Himmler in his capacity as Reichskommissar for the establishing of Germanism, dating from February and June 1942. They refer to the re-Germanization of former German Nations in the Eastern Territories, which in itself is not inadmissible. One of these decrees is addressed to the Gauleiters for their information. It contains no mention of any criminal measures.

The Prosecution concludes from Document No. 327-PS that the Gauleiters took part in the liquidation of enormous fortunes in the East. A closer examination shows that this is but the liquidation of German firms which had been set up as State enterprises at the cost of considerable subsidies. In a letter of 17 October 1944, the Gauleiters are merely being requested not to interfere with the liquidation meanwhile taking place in German territory. All this goes to show that the political leaders as a whole could have no special knowledge of any incidents of a criminal nature.

THE PRESIDENT: Dr. Servatius, before we adjourn, the Tribunal will adjourn tomorrow, Friday, at 4:00 o'clock in the afternoon.

DR. SERVATIUS: I did not hear, My Lord.

THE PRESIDENT: The Tribunal will adjourn tomorrow at 4 o'clock in the afternoon.

(The Tribunal adjourned until 23 August 1946, at 1000 hours).